Policy for Licencing Short-term and Non-Ongoing Use of Land and Seabed

Background

The Department of Transport and Major Infrastructure (DTMI or 'the Department") manages approximately 45 maritime facilities throughout Western Australia. Marinas, boat harbours, maritime facilities and associated foreshore commercial land uses are key features of our waterways and coastal environment, both economically and socially

The Department is willing to consider short to medium term opportunities to allow access to defined parcels of land and/or seabed under the terms and conditions of a non-exclusive licence agreement.

The licencing of DTMI land and/or seabed can provide opportunities that benefit the broader community and facilitate local business development. The Department may also issue a licence to allow non-exclusive use of a parcel of land for the purposes of conducting a specific, short-term and non-ongoing activity.

A licence affords all parties, including DTMI, proponents and other stakeholders' clarity regarding the permissible activities, whilst also setting out the contractual obligations required to be met by the proponent when conducting business or carrying out a certain activity.

As general rule, the DTMI does not solicit interest in a licence but rather will consider proposals put forward by interested parties based on an assessment of merit.

You should *allow up to 60 days' notice* to process your application.

Your application should outline the details of any expression of interest, including contact details, an outline of the proposal, planning approvals (if required), plans, photos or schematic drawings to illustrate location, land area, barriers and fencing and proximity to other facilities and structures within the maritime facility. ***Your application must also include confirmation that you hold valid public liability insurance to a minimum amount $20 million for the duration of any licence proposal.***

The Department reserves the right to make a final decision on an application based on the information provided or any further information requested of the proponent. In reaching a decision the Department will have regard to several factors including other tenants, jetty-users, penholders and members of the public who access our facilities and an appropriate level of risk mitigation.

Negotiations surrounding the details of any licence will include discussions on an appropriate fee.

Fees will generally be based on the non-ongoing access to a specified parcel of land or seabed, having regard to the length of term, the nature of the activity and the parties involved.

Any licence will be granted on a non-exclusive basis, and no permanent structures or construction are permitted unless approved (case by case).

In some cases, a licensee may be granted a level of authority to manage access to the parcel of land, including though the provision of temporary fencing, a program of traffic management or some additional measure otherwise defined within the agreement to address risk and allow for an appropriate level of security.

This policy does not constitute legal advice and should not be relied upon as such.

The licencing of jetties, moorings and pens and other related maritime structures are covered in separate legislation, principally the Jetties Act 1926 (WA). You can find information here.

Objectives

The objective of this policy is to outline the general terms and conditions under which the DTMI may consider issuing a licence to a third party for a variety of purposes, under the *Marine and Harbours Act 1981 WA* (MHA), including, but not limited to:

- a commercial business activity including limited retailing or operational activities (e.g. coffee van sales);
- a community event with attractions and amusements;
- the safe and secure storage of materials (not including the storage of vessels or any permission to live aboard a vessel);
- the conduct of a sporting activity or community event, both on land and in the water;
- the display of banners or related advertising material on infrastructure (e.g. light pole) owned or controlled by the Department;
- access to a structure (e.g. building, light pole) to place a device or other related equipment (i.e. camera, transmitter etc) for the purposes of security, research or communications requirements;
- permission to access land or carry out an activity not otherwise defined in a current lease (i.e. set out tables and chairs);
- to alienate a parcel of land or seabed for a short-term activity aligned to a maritime purpose, (i.e. jack up barge, or the loading of materials);
- scientific research and monitoring; and
- any other event as determined by the Department as being consistent with the applicable legislation.

The licence is proposed to be a flexible instrument that will set terms and conditions under which an activity may take place within a maritime facility. A key focus of the licence will be the appropriate management of any risk associated with the activity.

Amongst various terms and conditions to be specified within the licence, proponents should be aware that there will be **a non-negotiable requirement for applicants to hold a valid Public Liability insurance policy to the level of at least $20 million. Applicants must confirm their capacity to secure public liability insurance as part of their due diligence prior to moving to an expression of interest.**

Applicable legislation, policy and guidelines

DTMI is responsible for the administration of all land vested in the Minister for Transport, under the MHA, this includes the powers at section 6 to enter into an agreement (or licence).

The Department will determine the best type of licence having regard to factors such as the length of term and the specific nature of the activity proposed. The Department may propose an alternative arrangement, such as a Temporary Land Use Agreement (TLUA) especially for very short term and low risk activities (less than 3 days) or a Lease, if deemed more appropriate for long term or exclusive use. A fact sheet on TLUAs can be found on the Department's website.

The Department will reserve the right to refuse or rescind a licence under circumstances where it believes the activities do not meet the objectives of the legislation, produce no tangible benefit for the community, or unduly impact other tenants or members of the public.

General Framework and Structure

Proponents can expect that their licence will be crafted as an offer for the non-exclusive use of departmental land (or seabed) under specific conditions and for a limited term, where no legal interest in the property is created and cannot be registered on a Crown land title.

Proponents should also be aware that a licence does not create an obligation on the Department to do any other thing or carry out any further activity in the support of the licensee, beyond that which would be ordinarily undertaken as part of the management of the facility. In addition, proponents will be required to warrant that a particular site is suitable for the purposes for which they propose.

Unless otherwise agreed, the term of a licence will be for twelve (12) months or less.

A licence cannot be sold, assigned, transferred, mortgaged, changed or otherwise altered. Further, unless specifically noted within the terms and conditions, there will be no capacity for the proponent to sub-licence any rights or permissions to another party.

Any variation to the terms and conditions will be at the discretion of the Department.

The licence may reflect terms and conditions that are specific to the activity proposed and may include, *inter alia*, provisions to address issues such as:

- public safety;
- additional or specific insurance;
- specific “make good” provisions;
- fencing or other security provisions
- traffic management;
- provision of utilities (ie power or water);
- use of common areas; and
- noise mitigation

Compliance

Licensees are encouraged to make their own enquiries to satisfy themselves of any other statutory approvals that they may require in connection with a proposed activity on departmental land. This may include local planning requirements, operational safety provisions, food safety, working with children, volunteer activities, business registrations etc.

Licences will not be granted for activities involving residential use or any form of short stay accommodation.

Direct negotiation

DTMI seeks to grant a licence as a flexible, short-term and non-ongoing agreement between parties.

DTMI will negotiate directly with a proponent or their agent but in doing so, will have regard to the operational activities within the maritime facility including other tenants, licence holders and the public when deciding to issue a licence.

As part of the negotiations, the Department will determine any fees and charges to be attached to the licence, based on all available information. The Department may also, at its sole discretion, consider the waiver of fees and charges.

Depending on the requirements, DTMI *may* also impose a fee for the legal drafting of a bespoke licence arrangement. The nature and cost of any fee will be discussed as part of negotiations and may be recovered outright or as part of the ongoing licence fee.

Maintenance obligations

Licensees must maintain any structures erected on the DTMI land in a safe and physically suitable condition for the activities authorised by the licence, this includes any structure or object that is installed on, within or near an asset of DTMI or in any waters within a maritime facility under control of the Department.

Indemnities, insurance and business registration

Licensees will be required to indemnify and keep indemnified: the Minister for Transport; and agents, servants, employees and contractors of the Crown from and against any loss, claim (including a third-party claim), damage or cost arising out of the use of the licenced area and wrongful or negligent act or omission in breach of the Licence Agreement.

Licensees must at their expense, maintain appropriate levels of insurance against foreseeable risks relating to their occupation of DTMI administered land, including, but not limited to, public liability, workers compensation and volunteer's insurance where appropriate. Applicants will be expected to provide proof of insurance as part of their licence application.

DTMI reserves the right to require additional insurance or to specify the appropriate levels of insurance on a case-by-case basis.

Applicants will be expected to confirm evidence of their commercial business registration or evidence of their status as a not-for-profit entity.

May 2026