



Department of
Transport

Leasing Information and Guidelines

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FOREWORD

These guidelines are provided as a guide for current and prospective lessees of DoT land for commercial, industrial and/or retail purposes, and to provide information on the process used in evaluating the suitability of development applications.

A principal function of the WA Department of Transport (DoT) is to manage property vested in the Minister for Transport (a body corporate) under the Marine and Harbours Act 1981, including the acquisition, development, use and leasing of land for maritime commercial, industrial and recreational purposes. DoT delivers its property services to lessees via external property agents. Contact details for those agents can be obtained by initially contacting DoT's Manager Facility Operations on (08) 9435 7770 or Manager Property Services on (08) 9435 7646. Marinas, boat harbours, maritime facilities and associated foreshore commercial land uses are important features of the waterways of Western Australia, both economically and socially. DoT through the Maritime Business Unit (MBU) is the largest operator of maritime facilities in the State and manages approximately 50 locations throughout WA.

Leased land provides opportunities for marine and waterfront based businesses, which includes retail and tourism developments and community based activities whereby they may be leased to private and public sector organisations for development. DoT managed harbours also provide recreational and public spaces to enhance the overall experience for visitors and locals alike.

These guidelines should be read in conjunction with DoT's Leasing Policy Statements which can be found at DoT website: www.transport.wa.gov.au/imagine/leasing-opportunities.asp.

Steve Jenkins
General Manager
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Section 1: Objectives and Application

1.1 Objectives

The Government recognises the economic and social importance of marinas, boat harbours and maritime facilities for the boating, fishing and oil and gas industries and other commercial businesses. The ongoing need to improve existing facilities and to provide new facilities for those enterprises, the boating public and for public recreation is also recognised. Waterfront industries provide a range of valuable public services and facilities which benefit the local community and often occupy the only practical access to the foreshore.

The intent of DoT is to provide benefits to Western Australia by:

- Ensuring that the commercial leasing and licensing of DoT land is consistent, fair and impartial;
- Ensuring long-term access to the waterfront for the fishing, boating, resource and maritime industries and providing public access and amenity;
- Using the income from the lease of DoT land to fund the operational, maintenance and replacement costs for all DoT-owned maritime assets;
- Encouraging the sound environmental management of Western Australian marinas, boat harbours, maritime facilities, waterways and foreshores;
- Supporting commercial activities associated with marine operations such as the fishing, charter, and resource industries, marine tourism and marine fuelling;
- Encouraging the ongoing development and improvement of existing and new sites for the storage, maintenance, repair and use of watercraft by the boating public, and to ensure the availability of high quality infrastructure for these purposes;
- Securing a market return from the commercial use of DoT land and the best outcome for the State;
- Providing certainty for the holders of DoT land in a commercially secure environment; and
- Promoting and encouraging the operation of market forces in the development and operation of DoT land.

1.2 Types of business to which these guidelines apply

The land within a Harbour Reserve may be used for Harbour Purposes which, given the social and economic value of a harbour to the local community, include but are not limited to:

- Retail outlets
- Hospitality and tourism developments
- Short-stay accommodation
- Marine support services including the resource industry
- Registered marine related clubs, including yachting and sailing clubs
- Utilities providers
- Boat launching ramps and boat lifters
- Maritime based community groups; and
- Fishing industry and related activities

These guidelines do not apply to:

- Jetty licences,
- Pen or mooring licences within existing DoT managed facilities,
- Leases administered by Port Authorities or leases within privately managed marinas and port facilities, and
- Private commercial marina developments.

Under current planning controls in Western Australia, where a new marina or boat harbour is proposed, the Minister for Transport (Minister) is the Consent Authority with DoT as the Responsible Agency. In the event that the development is considered a State-significant development, approval and/or involvement of the Minister for State Development may also be required.

Where a proposal for a new privately developed marina or boat harbour is put forward to the Minister for approval, the land will be reserved under the *Land Administration Act 1997* (LAA) with a Management Order for Harbour Purposes issued to the Minister., The land is required to be vested in the Minister under the *Marine and Harbours Act 1981* (MHA) prior to leasing to the private developers under negotiated terms.

1.3 Planning approvals

DoT's leasing Policy Statements and these guidelines do not affect any requirement to obtain planning or development or construction consent under other legislation.

Where the terms of a proposed lease require the prospective lessee to develop the premises, the lessee must obtain all necessary approvals, licences or permits required by State and local authorities in respect of any proposed development and must also obtain planning approval.

In some instances, MBU through its external agent may grant in-principle approval for a development concept, which sets out conditions precedent to the grant of a lease. Examples of such conditions include obtaining development consent for certain works on the land and/or construction within a specified time.

In addition to other statutory approvals, any development activities will be required, where applicable, to comply with the intent and requirements of the:

- *Shipping and Pilotage Act 1967*
- *Jetties Act 1926*
- *Commercial Tenancies (Retail Shops) Agreements Act 1985*
- *Marine and Harbours Act 1981*
- *Land Administration Act 1997*
- *Environmental Protection Act 1986*
- Australian Standards

1.4 Western Australian Government Policies and Guidelines

In considering a proposal to lease DoT land, the Department of Transport will apply the following:

- the provisions of its Leasing Policy and these guidelines;
- relevant laws and statutory requirements of the Commonwealth and the State of Western Australia.

1.5 Legislation under which Maritime acts

- *Marine and Harbours Act 1981*

The DoT, through MBU, is responsible for the administration of all land and seabed vested in the Minister under the MHA.

The Act contains provisions, which establish the powers of the Minister to address, amongst other things, the following essential matters:

- The term and conditions of a lease or licence;
- The transfer, sub-letting or other dealings of leases and licences;
- The termination of a lease or licence if the lessee or licensee fails to comply with a condition of the lease/licence;
- The withdrawal of land from a lease or licence for a public purpose;
- The removal or alteration of conditions;
- The principles of rent determination and review.

The MHA empowers the Minister to lease or license DoT land, but not to grant freehold title. Sale of DoT land can only be effected under the provisions of the LAA and will therefore not be sold under the MHA. These guidelines relate to provisions of the MHA relating to creation and administration of leases and licences of DoT land, refer to Section 1.6 of this document – Application of these guidelines – The sale of land on a freehold basis.

MBU stores and maintains a central register for land and seabed vested in the Minister under the MHA.

- *Land Administration Act 1997*

Prior to vesting of land and seabed in the Minister for Transport, the Department of Planning, Lands and Heritage arrange for the land to be set aside as a Reserve under Section 41 of the LAA, and for a Management Order to be issued in the name of the Minister pursuant to Section 46 of the LAA. Land is then vested in the Minister pursuant to a proclamation by the Governor under Section 9 of the MHA. The majority of leases that are covered by these guidelines will be located within the boundaries of land reserved in this manner and the associated Management Order will usually prescribe “Harbour Purposes” as the appropriate use for this reserved land.

For a definition of Harbour Purposes see the glossary in Appendix A.

1.6 Application of these guidelines

Holders of Crown tenures will continue to be subject to legislative controls exercised by other State government agencies and local government for activities, including the protection of the environment, the maintenance of a safe workplace, and orderly development. DoT will encourage lease holders to develop and implement codes of best practice.

The sale of land on a freehold basis

There is no provision under the MHA for the sale on a freehold basis of land vested in the Minister. This position is reinforced by the following principles:

1. DoT boat harbours are key strategic maritime public assets that must be held by the State to allow long-term access to the waterfront for the fishing, boating and maritime industries and for providing public access and amenity. The State has established Harbour Reserves over its DoT land to ensure long-term accessibility to these strategic public assets.
2. The State invests significant capital into the development of its boat harbours and maritime facilities. The establishment of the land as a Harbour Reserve with development by third parties on a medium to long-term leasehold basis is the appropriate mechanism to ensure that DoT land remains available for its intended purpose. The State would lose much of its control over the usage of strategic waterfront DoT land were it to be sold freehold and this would not be in the long-term interests of the State and the public.
3. Income from the lease of DoT land is critical as it directly funds the operational, maintenance and asset replacement costs for all DoT-owned maritime assets.

Section 2: Processes for Granting Leases

2.1 Overview

All leases within new development sites will be subject to public competition and a registration of interest and/or tender process. For all other sites MBU, through its external agent, may choose to deal with applicants on a direct negotiation basis.

Lease categories covered in this section of the guidelines will include:

1. Leases within new harbour developments,
2. Leases within areas of expansion that have been identified for development within existing harbour boundaries, and
3. Existing tenures.

2.2 How MBU determines preferred uses of DoT land.

Structure Plans and Development Guidelines

Boat harbours are strategic assets, and in some locations planning may have occurred by MBU in cooperation with the Western Australian Planning Commission (WAPC) and local government authorities to coordinate future planning and development of the harbour and its surrounds.

The zoning of land itself is determined by the local government authority's Town Planning Scheme which may be supported by a structure plan or similar – use of the land is also impacted by local government authority and WAPC policies and other guidelines. Planning by the local government authority under a local Town Planning Scheme establishes the use and development permissibility and any associated conditions for land in WA. Lessees can access additional information from the Town Planning Scheme applicable to an area regarding land use and development provisions within a harbour reserve. Examples that these provisions cover include, amongst others, the layout of the site and buildings – “built form”, public access areas, signage guidelines and traffic management strategies. MBU will need to review and consider the implications of a Town Planning Scheme regarding the zoning, permitted uses and development provisions for DoT land when considering lease applications.

MBU generally does not support the development of caretaker dwellings on lease sites.

Area Assessments by Maritime

When considering a lease application, further tenure(s) for an expiring lease or when identifying new areas of DoT land, buildings or infrastructure for lease or licence, MBU may conduct an assessment of the proposed lease area to determine suitable or preferred uses of DoT land.

2.3 Public Competition

All new development sites will be subject to public competition and a registration of interest and/or tender process. MBU shall ensure compliance with the Government's policy on *Open and Effective Competition*.

Selection Criteria

When MBU advertises for expressions of interest to be submitted for leasing DoT land within a new development site, this process may include a list of selection criteria, the performance against which MBU may select preferred lessees.

Selection criteria will be clearly outlined in documentation associated with the public competition process. Broad selection criteria will include, but not be limited to, the following issues regarding the proposed use of the land:

- What services, if any, will be provided that relate to facility and/or harbour activities?
- What will be the broader benefits of the proposed activity to the facility/harbour?
- Are there any demonstrated tangible benefits to the operation of the facility/harbour? and
- What will be the benefits to the local community as a whole?

An applicant will also be required to provide MBU with the following:

- details of relevant skills and experience in the business or operation proposed to be carried out on the DoT land;
- evidence of capacity to satisfy the financial obligations of the lease (including rent, make-good, proposed capital works and maintenance) as well as information regarding the prospective lessee's compliance with previous leases (if applicable); and
- any other information reasonably required by MBU for the purpose of deciding whether or not to lease DoT land to the prospective lessee.

MBU reserves the right to select a preferred lessee based on criteria that may not be outlined in the expression of interest documentation.

Development Concept

The format for addressing selection criteria may vary from site to site, however it is usual for applicants to be required to submit a Development Concept to MBU for evaluation.

A Development Concept will contain:

- A preliminary layout plan which should outline:
 - the intended uses of the land,
 - improvements and buildings proposed for the site/s,
 - improvements and new jetty structures for the adjoining seabed/water areas,
 - improvements to road infrastructure,
 - provision of car parking spaces commensurate with the type and use of building proposed in accord with Australian Standards requirements,
 - site levels,
 - improvements to water based infrastructure (if applicable),
 - vehicle entry and exits including traffic flow management internally and external to the site, and
 - any provision of public infrastructure
- vessel management (if applicable),
- requirements for services such as power and water,
- the estimated cost of expenditure,
- a development timeframe,

- the proposed hours of operation, and
- the proposed term of lease.

Business Case

The applicant may also be asked to submit a Business Case, outlining their financial capacity to successfully undertake the proposed development and ongoing lease commitments as well as explain their capability to meet proposed development timeframes.

As part of this process the applicant may be required to outline details of their experience in the business proposed to be conducted from the site/s.

It is the intention of these provisions that MBU will satisfy itself that the proposed business endeavours have a reasonable prospect of success before entering into a lease or agreement to lease.

2.4 New Development Sites

MBU from time to time may identify new areas of DoT land for lease or licence for development. An area assessment and/or a public interest test may also establish that the development/redevelopment of the site of an existing tenure should also be treated as a new development site. For definition of 'public interest test' see the glossary in Appendix A.

2.5 Expansion within existing harbour facilities

Where demand for harbour and associated infrastructure increases, MBU may from time to time, in line with development priorities set out in the structure plan or facility master plan, release undeveloped DoT land within a Harbour Reserve for commercial leasing.

When this occurs, the new area will be dealt with similarly to a new development site as outlined in 2.3 above.

DoT Improvements

Where a development site has been materially improved by MBU, or contains buildings, fixtures or fittings owned by DoT, the incoming tenant will be required to pay to DoT an agreed amount for the use of these improvements.

2.6 Existing Tenures

Granting further tenure(s) for existing leases

In considering renewing the tenure for an existing lease, MBU, through its external agent, will reference industry best practices in seeking not only a viable commercial arrangement but one which protects the environment and meets broad community needs and the operational requirements of the maritime facility.

The following specific conditions will apply to existing leases under these guidelines.

All existing tenures covered by these guidelines would generally be renewed on or before expiry without public competition provided DoT is satisfied with the future expansion plans of the existing lessee and/or its continued use of the lot. Application for a further lease must be made to MBU in accordance with the terms and conditions relating to renewal as outlined in the current lease.

When the lease has expired and there are no further renewal options, a new lease may be negotiated on such terms and conditions as are applicable to current DoT leases. The new lease will generally be offered under the same conditions as the lease it replaces except where altered or modified conditions are required to provide a more up-to date tenure to achieve environmental, statutory or commercial objectives. It is intended that renewed tenures will normally reflect commercial terms.

MBU is unlikely to consider renewing the tenure of an existing lease if the lessee has failed in their obligations under the lease agreement.

The only other basis for the tenure of an existing lease not being renewed, other than as a result of a breach of the tenant's obligations, would be because the land is required in the public interest as determined through an area assessment or public interest test and the principles of DoT land management.

Development/Redevelopment or Change of Use

All development/redevelopment of DoT tenures involving a change of use or an intensification of use may involve a public test. Applicants will be required to meet DoT's reasonable costs in assessing development/redevelopment proposals.

DoT reserves the right to determine whether a development/redevelopment proposal constitutes a new development based on the scale and nature of the proposed development. Such sites will be dealt with as a New Development Site under these guidelines (see Section 2.2). However, the requirement for a public interest test will not be applied where development is undertaken to meet new statutory requirements imposed on the lessee or to achieve industry wide reforms agreed to by Government.

MBU will consider consent for the lodgement of a development application where development consent is required. Approval condition(s) for a change of use(s) or to the term(s) of tenure may include a rent appraisal.

Without being prescriptive, MBU will seek to ensure that priority is given to retaining and improving water-dependant uses such as boat lifters, slipways and repair facilities, or fuel and emergency service access points. Ancillary developments such as restaurants, cafes and brokerage services will be considered in light of likely impacts on surrounding properties and within the context of existing statutory planning controls. Wherever possible, enhanced public access to the foreshore will be encouraged.

Ownership and Maintenance of Existing and New Improvements

All improvements on DoT land, unless otherwise provided by a condition of the tenancy, become the property of DoT at the end of the tenure, if it is not renewed. Tenures may require the removal of some or all structures and improvements at or before the end of the tenure. The removal of all structures, if required, may necessitate remediation of the site to reinstate it to its initial state (see Section 3.11).

The lessee is to maintain all structures to MBU's satisfaction during the term of the tenure as prescribed by the lease conditions.

Section 3: Lease Terms and Conditions

Overview

The following section covers the general arrangements of DoT Leases although individual lease arrangements may differ.

3.1 Term of Tenure

All new tenures will be negotiated on a site by site basis and provide for a term which is reflective of:

- the nature, size and complexity of the development;
- the need for the lessee to amortise any new investment and to receive a commercial return having regard to the value of the existing site; and
- any agreed initiatives to provide particular public benefits, services or facilities.

Where an area assessment indicates that a change of use or a significant intensification of use should occur in the foreseeable future, the new term may be limited to reflect the timing of the proposed planning horizon.

The lease terms shall generally be up to ten (10) years. However, there are certain circumstances, which warrant consideration being given to supporting a longer term:

- where the lessee is required to borrow substantial sums of money to facilitate the development and the lending institution requires greater security of tenure to protect its investment,
- where the lessee can demonstrate that investment is sufficiently large to suggest that the investment cannot realistically be recovered and a profit made within the lease period,

- where the nature of the development takes place on an ongoing basis over an extended period. In such a case, the period during which the investment can be recovered is considerably reduced, and
- where it is desirable to attract business or industry into an area and where a long-term lease may offset other factors, which would otherwise preclude development.

The lease term for a commercial retail tenancy will also be subject to the minimal lease term provisions contained in the Commercial Tenancy (Retail Shops) Agreement Act 1985.

The lease terms shall generally be limited to a maximum of twenty one (21) years. There would need to be exceptional circumstances present to consider the granting of any lease period and option, which exceeds twenty one (21) years and in general MBU does not favour such a lengthy period.

It should be noted that the Marine and Harbours Act empowers the Minister to lease or license DoT land, but not to grant freehold title (see Section 1.6 Application of these guidelines – sale of freehold land).

3.2 Rental Determination

Market Valuation Assessment

All rentals on new lease negotiations will be market-based and reflect and reference the value of the DoT's improvements (if any), the purpose of the tenure, the area of the premises and other relevant rental determination matters. Valuations for rental determinations will be established on a basis that reflects a fair and equitable return for the lessor and lessee.

Rent Review

All rents that are based wholly or partly on market valuation will be subject to:

- A regular rent review at specified periods during the lease term, to ensure the lease provisions remain consistent with market rates;
- An adjustment to reflect market value or positive movements in CPI (whichever is greater) applied either annually or every three years depending on lease terms and conditions, and;

- Provisions that, despite the methodology for the rent review, a reviewed market rent may not be less than the rent payable prior to the review.

Reviews on market value will be supplied by the Valuer General or a private commercial land valuer, engaged by MBU at its own cost to determine an appropriate market rent for the lease. Where a lessee disputes the market rate, as determined by MBU, the standard lease document contains provisions for the lessee to seek an independent valuation.

3.3 Capital works

MBU encourages investment in new and renewed maritime infrastructure, to ensure the delivery of world-class commercial and recreational boating facilities.

It is a standard lease condition that any works may only be carried out on the Premises provided:

- Prior written approval has been obtained from MBU;
- The Lessee has obtained and complied with all relevant planning approvals, consents and permits for the works; and
- The works are carried out in accordance with any timetable, program or standards agreed in writing between the parties prior to commencement.

If a lessee fails to meet these obligations, MBU may:

- cease providing any concessions or incentive contingent upon the works;
- seek repayment of the value of applicable concessions or incentives provided; and/or
- commence action to terminate the lease.

3.4 Power to Sub-let

Requests for subletting will be considered subject to the proposed use of the DoT land being consistent with purposes permitted under the head lease.

3.5 Right to Assign

Requests for assignment will be considered provided that the lessee is not in default, the Assignee is a suitable applicant and the ongoing use of the DoT land remains consistent with purposes permitted under the head lease.

3.6 Mortgages and Other Interests

A lessee must not grant an interest in the lessee's leasehold estate to a third party without the Minister's approval. This generally will require a review of the proposed interest to be granted to the third party and the execution of a form of consent provided by MBU. All such interests granted by lessees to third parties will determine at the end of a lessee's lease. A lessee will be responsible for all costs incurred by DoT in providing such an approval.

3.7 Bank Guarantees and Cash Bonds

Where a lessee is required under its lease to provide a security deposit or bank guarantee, the original of that cash bond/bank guarantee will be held by DoT in accordance with the terms of the lessee's lease.

A bank guarantee or cash bond, usually calculated on a proportion (commonly twelve (12) months plus GST) of rent is required to guarantee the performance of the lessee's essential obligations under the lease.

Due to the nature of commercial operations on the lease site (such as a fuel site leases which offer a higher risk of contamination) or the level of capital works requiring higher site remediation costs, additional bond monies may be required to cover:

- a. the removal of all buildings and improvements from the site after termination of the lease; and

- b. making good any damage caused by the clean-up and or removal of any contamination on the site.

The Bank Guarantee or Cash Bond sum is reviewed every three (3) years.

3.8 Maintenance obligations

Lessees will be required at all times to maintain the structures on DoT land and the Lease area in a safe and physically suitable condition for the commercial activities authorised by the Lease.

3.9 Indemnities and Insurance

Lessees will be required to indemnify DoT, the Minister, the Crown and the State against any action, liability or loss arising from their occupation of DoT land.

Lessees must at their expense maintain insurance against all foreseeable risks relating to their occupation of DoT land, including (but not limited to) public liability, workers compensation and premises insurance. Policies may be taken out in the joint names of DoT and the Lessee.

3.10 Goodwill and Residual Value of Improvements

No compensation will be payable to a lessee by DoT, the Minister, the Crown or the State for the residual value of any improvements, or for business goodwill, at the expiry, termination or assignment of a lease.

3.11 Ownership and removal of improvements

The lessee must not remove any such structures either during the lease term or upon expiry or earlier termination of the lease without the approval of MBU.

However, the lessor may require the removal of some or all structures or improvements, upon the expiration of the term or the earlier termination of the lease and at the lessee's cost.

In addition, the lessee may be required to carry out “make-good” and remediation works to restore the land to the reasonable satisfaction of MBU.

3.12 Holding over

If a Lease expires and the lessee remains in occupation of the Premises with the consent of the lessor, the lease holdover provisions of the Lease will apply and the Lease may be terminated by either party by giving one months’ notice in writing.

The notice period under this clause does not apply where MBU has commenced action to terminate a lease following material breaches of essential lease conditions

Leases held under this arrangement will be subject to a 10% increase in rental for the holding over period.

3.13 Other fees that are payable by the Lessee

Legal Costs

The Lessee will be required to provide for legal fees, including the legal costs associated with the preparation of the draft lease agreement. Additional legal cost may be incurred for non-standard leases or lengthy negotiations requiring lease amendments or the review of documents such as subleases, assignments and the like.

It should be noted that if the lease is subject to the provisions of the Commercial Tenancy (Retail Shops) Agreement Act 1985 (Section 14B), the Lessee is not responsible for costs associated with preparation of the initial lease agreement or any renewal or extension thereof.

Outgoings

The lessee will be responsible for payment of all outgoings assessed, charged or incurred in respect of the Lease including, but not limited to: rates, utilities

costs, tax duties, charges and assessments relating to the ongoing use of the leased DoT land.

Harbour Area Contribution

Most boat harbours/marinas require the payment of a Harbour Area Contribution, which is a contribution by the lessee toward costs associated with maintaining basic access and services/facilities provided by MBU within a maritime facility. A review of all Harbour Area Contributions shall occur from time to time.

Property Management Costs

The Lessee will be responsible for the payment of any fees and costs charged by a managing agent for managing the Lease or providing management services in relation to the Lease in behalf of the Lessor.

Appendix A

Glossary

Area Assessment is the evaluation of land vested in the Minister for Transport to determine the land's capability, and includes the identification of suitable and preferred uses of DoT land.

DoT land means land that is vested to the Minister for Transport (a body corporate) under s.9 of the *Marine and Harbours Act 1981* as defined under the Act. This includes seabed and land above the mean high water mark.

DoT means the Department of Transport.

MBU means the Maritime Business Unit in the Department of Transport.

External Property Agent means any agent appointed by the DoT to provide property management services for **DoT land**.

Harbour Purposes (see Maritime Related Activities) below.

LAA means the *Land Administration Act 1997*.

Lease and Licence means the lease and or licence issued under the MHA between the Minister for Transport and the Lessee and or Licensee.

Management Order means a management order issued under s.46 of the LAA.

Marinas, Boat Harbours and Maritime Facilities mean facilities that moor, berth or store vessels at fixed or floating berths, at freestanding moorings, alongside jetties, wharves or pontoons.

Maritime-related activities include activities associated with:

- the construction, repair, maintenance, storage, sale or hire of boats; and/or
- fuelling, sewage pump-out or other services directly related to boating; and/or

- the launching or landing of boats, such as slipways or hoists;
- the provision of ‘working harbour’ services including boat repairs, salvage, marine infrastructure installation and maintenance; and
- commercial, tourist or recreation activities that are ancillary to a boating facility, provided that any such activity is principally targeted toward users of the boating facility itself;

Market Valuation means the current price at which land in a particular location can be leased agreed between two willing parties, namely the Lessor and the Lessee.

Market valuation will be location specific and may be determined by either the Valuer General or a private valuer.

MHA means the *Marine and Harbours Act 1981*.

Minister means the Minister for Transport, a body corporate constituted by s.8 of the MHA.

New Development Site refers to an area of undeveloped DoT land within a Harbour Reserve, which either adjoins an existing maritime facility or exists as part, or whole, of the leasable area within a maritime facility yet to be developed, and which MBU makes available to the public for lease or licence.

Private commercial marina refers to a marina, boat harbour or other maritime facility, and any associated leasable land, which has been built by private developers on DoT land leased from DoT and which is administered on a commercial basis by private interests.

Public interest test includes (but is not limited to) consideration of the following matters, and at the discretion of DoT, may include advertising before a decision is made:

- Whether the proposal is consistent with the principles of the MHA;
- Whether the proposal will provide improved public access to the foreshore and inland/coastal waterways, particularly for the disabled;
- Whether the proposal will facilitate the introduction of new skills, technology or services;
- Whether the proposal represents value for money – including improved risk management, whole-of-government costing, innovation, costs to government and improvements to whole-of-government outcomes;
- Whether the proposal will lead to an undesirable increase in market dominance;
- Whether the proposal would unreasonably interfere with other current or future uses of adjoining DoT land or DoT land within the immediate area;

- Whether the proposal provides positive initiatives to improve environmental protection and management;
- Whether alternative uses or designs of the proposal should be contemplated before the proposal is accepted by DoT;
- Whether the proponent has the required probity, financial and operational capacity;
- Whether the proposal provides a regional benefit;
- Whether the proposal provides improved community access and or benefit.

Residual Value of Improvements means the value of improvements at the end of the tenancy, determined in accordance with established accounting and valuation practices, or otherwise agreed between the parties.

Tenure includes a lease or a licence under the MHA.

Waterfront Commercial Uses includes, but is not limited to, marine industries or other related land or water shoreline facilities and may include clubs, commercial premises, retail outlets, kiosks and restaurants, tourist, recreation and port facilities.