

# State-managed Boat Harbour Leasing Policy

June 2014

<b>1</b>	<b>Purpose of policy</b>	<b>1</b>
<b>2</b>	<b>Application of policy</b>	<b>1</b>
<b>3</b>	<b>Evaluating and granting a new lease</b>	<b>2</b>
3.1	Competitive market tender process	2
3.2	In priority dealing in special circumstances	2
<b>4</b>	<b>Contents of proposals</b>	<b>3</b>
4.1	Mandatory contents	3
4.2	Additional information that may be requested	4
<b>5</b>	<b>Evaluating and granting a renewal, sub-lease or assignment of an existing lease</b>	<b>5</b>
<b>6</b>	<b>Evaluating and granting other forms of tenure</b>	<b>5</b>
<b>7</b>	<b>Local, state and federal approval</b>	<b>6</b>
<b>8</b>	<b>Rent</b>	<b>7</b>
8.1	Calculation of rent	7
8.2	Rent review	7
8.3	Payment of rent and non-compliance with the lease	7
<b>9</b>	<b>Lease requirements</b>	<b>8</b>
9.1	Sub-leasing	8
9.2	Assignment of a lease	8
9.3	Indemnity and insurance	8
9.4	Capital works	9
9.5	Maintenance obligations	9
9.6	Outgoings	9
9.7	Value of improvements	9
9.8	Bond and bank guarantee	9
9.9	Agreement to lease	9
<b>10</b>	<b>Terms of the lease</b>	<b>10</b>
<b>11</b>	<b>Further information</b>	<b>10</b>

## **1 Purpose of policy**

The purpose of this policy is to provide a consistent, equitable and transparent framework for lease negotiations concerning land and water at the Department of Transport and Main Roads' (the department) state-managed boat harbours. At the date of this policy, these boat harbours include Bowen, Cabbage Tree Creek, Manly, Mooloolaba, Rosslyn Bay, Scarborough, Snapper Creek and Urangan.

This policy also provides a framework for negotiations relating to other forms of tenure at the state-managed boat harbours.

This policy will achieve this purpose by setting the following objectives for tenure negotiations:

- ensure transparency and equity
- generate revenue for investment to improve and maintain boat harbour facilities and services
- promote and maintain safe and equitable, long-term access to the waterfront for tourism and recreational and commercial boating, fishing and transport
- achieve sound ecological management principles
- provide financially viable market return for the benefit of the people of Queensland
- encourage the effect of market forces in the operation, development and management of the harbours.

## **2 Application of policy**

The department will seek to achieve the objectives of this policy in all negotiations concerning land and water within the harbours, including but not limited to, negotiations to enter a new lease or renew or extend an existing lease from the date of its initial publication (June 2014).

The department will apply this policy where it does not contradict:

- Queensland Government policies or guidelines
- any federal, state or local government law
- the requirements of a contract, lease or head lease into which the department has already entered.

### **3 Evaluating and granting a new lease**

#### **3.1 Competitive market tender process**

The department is willing to discuss the preliminary concept and design of lease proposals with prospective leaseholders. However, the department will only evaluate and then consider entering a new lease through a competitive market tender process that the department has undertaken in accordance with the Queensland Government's Transaction Policy and any other relevant policies. The Transaction Policy is available on the Department of State Development, Infrastructure and Planning's website at <http://www.dsdip.qld.gov.au/resources/glam-transaction-policy.pdf>

This competitive market tender process typically includes the department:

- inviting formal expressions of interest lease proposals from the market
- evaluating these proposals against the department's applicable policies
- entering a lease or an agreement for lease subject to the successful applicant meeting certain requirements such as planning approval and financial capacity.

#### **3.2 In priority dealing in special circumstances**

In special circumstances, the department may choose to enter a lease with a prospective leaseholder without inviting and then comparing formal expressions of interest from the market. This process is known as an "in priority dealing". The department will undertake in priority dealings in accordance with the Queensland Government's Transaction Policy and any other relevant policies.

The department reserves the right to cease in priority dealings with prospective leaseholders for any reason at any time and revert to a competitive market tender process. For example, the department may cease in priority dealings if it considers (in its sole discretion):

- it cannot reach agreement with a prospective leaseholder within a reasonable time period
- necessary documentation has not been signed within a reasonable time period
- the prospective leaseholder has not acted in good faith
- the prospective leaseholder's past record of fulfilling lease obligations is unacceptable
- it does not have sufficient information concerning the prospective leaseholder or the viability of the intended use
- the prospective leaseholder may not be able to fulfil its obligations under the proposed lease
- there is a conflict of interest or probity concern.

## 4 Contents of proposals

All lease proposals by prospective leaseholders must include the mandatory items listed in Section 4.1 regardless of whether the department has chosen to undertake a competitive market tender or in priority dealing.

The department may request any additional information through the formal expression of interest invitation depending on the nature of the proposed development. The department may request any additional information for in priority dealings once the department has reviewed the initial mandatory items. Section 4.2 provides a non-exhaustive example list of additional information that the department may request from a prospective leaseholder. The department may also request this information from licensees or assignees.

### 4.1 Mandatory contents

- Plans of development, prepared to scale using a professional drafting program (e.g. AutoCad) and provided to the department in PDF format, that clearly illustrate:
  - the proposed lease area (i.e. premises, wet and dry areas)
  - all components of the proposed use (e.g. including parking, storage, pontoons, jetties etc.)
  - the extent of any proposed construction (e.g. site area, floor plans, elevations etc.).
- A business case, that details:
  - the desired lease term (all lease proposals except assignment proposals)
  - the need and opportunity for the proposed use of the lease
  - the scope of works and investment that the prospective leaseholder, assignee or licensee will undertake
  - the benefit of the proposed use to the public of Queensland
  - the suitability of the proposed use to the proposed site
  - a risk assessment and proposed mitigation strategies
  - an implementation plan for operation of the proposed use and a timeline of relevant set up activities (e.g. design, approvals, construction and operation lease term etc.)
  - a budget for the proposed use / business (e.g. start-up funding required, estimates of revenue to be received, estimates of expenses including rent, insurance, maintenance, make good obligations)
- A financial capacity and capability report, that provides:
  - evidence of the prospective leaseholder's financial capacity and capability to fulfil financial obligations (e.g. balance sheets, profit and loss statements, financial expenses etc.)

- evidence of the prospective leaseholder's skills, experience and ability to run a successful business or operation of the kind proposed (e.g. references, financial records, evidence of compliance with previous leases etc.)
- details of any finance being obtained by the leaseholder (e.g. mortgages, charges etc.).

#### **4.2 Additional information that may be requested**

- A transport impact assessment report and management plan that illustrates how the proposed use ensures the safety and efficiency of the transport movement network inside and outside the premises by addressing, among other relevant matters, access, circulation and parking for all transport modes.
- A planning report, that details:
  - an understanding of the town planning, building, licensing and other approvals necessary to lawfully construct / operate the proposed use
  - the likely time-frames for gaining relevant approvals / consents (if approvals / consents are required)
  - evidence the proposed use is likely to gain all necessary approvals / consents (if approvals / consents are required)
  - evidence of preliminary support for the proposed use by approving authorities (e.g. minutes of pre-lodgement meetings or letters of advice from town planning experts or Council representatives etc.).
- Any other information the department considers necessary to assess the proposal (e.g. management plans, environmental reports etc.).

## **5 Evaluating and granting a renewal, sub-lease or assignment of an existing lease**

The department may consider direct requests to renew, sub-lease or assign an existing lease in accordance with the Queensland Government's Transaction Policy and any other relevant policies. These requests must be sent to the department's boat harbours property team at [commlease@tmr.qld.gov.au](mailto:commlease@tmr.qld.gov.au) and include all the mandatory items listed in Section 4.1 (except where otherwise stated). Upon reviewing this initial material, the department may then request any additional information it considers necessary to assess whether to consent to the renewal, sub-lease or assignment of the lease, depending on the nature of the proposal and the terms of the lease.

The department reserves the right to stop considering direct requests to renew, sub-lease or assign a lease at any stage and revert to a competitive market tender process.

## **6 Evaluating and granting other forms of tenure**

The department is also willing to consider direct requests for other forms of access to and / or occupation of the department's boat harbours. These requests must also be sent to the department's boat harbour property team at [commlease@tmr.qld.gov.au](mailto:commlease@tmr.qld.gov.au) and include all the mandatory items listed in Section 4.1. Similarly, the department may request additional information to enable it to assess whether to grant the access and / or tenure.

The department will charge successful applicants a setup fee, calculated in accordance with the department's State-managed Boat Harbour Rent and Fee Schedule (as amended from time to time), in addition to the rent payable under the relevant agreement.

## **7 Local, state and federal approval**

It is the responsibility of leaseholders to obtain, maintain and renew all necessary approvals for the occupation and use of the premises, including obtaining any development approvals. The department's grant of a lease, sublease and assignment of lease or licence does not constitute a consent to a development approval. The department's consent to a development application does not constitute a lease, sublease, assignment of lease or licence.

Please note that leaseholders and prospective leaseholders will need to hire independent technical advisors (town planners, architects, engineers etc.) to prepare professional applications for such approvals. All costs associated with preparing, lodging and obtaining approvals are the responsibility of the leaseholder.

In many cases, the leaseholder may be required to provide evidence of the department's consent as landholder when applying for such approvals. In such cases, where the department provides consent to an application, the leaseholder must provide to the department a copy of any approvals the leaseholder receives from the relevant approving authority.

In some instances, the department and prospective leaseholder may enter into an agreement for lease or a development agreement that will stipulate conditions that the leaseholder must fulfil before the department will grant a lease. These conditions are separate from and in addition to any imposed by any statutory authority issuing relevant local, state or federal approval.



## **8 Rent**

### **8.1 Calculation of rent**

The department will lease state-managed boat harbour land and wet areas at rent, calculated in accordance with the department's State-managed Boat Harbour Rent and Fee Schedule. This schedule is available on the department's website at the following address <http://www.tmr.qld.gov.au/Community-and-environment/Property-information/Transport-and-Main-Roads-property/Properties-for-rent.aspx>. Please note that the department updates and amends this schedule from time to time.

### **8.2 Rent review**

Rent reviews will occur periodically during the lease term to ensure that rent remains consistent with the objectives of this policy.

The nature of rent reviews will depend on the terms of the lease and may include:

- adjusting the rent to market rent
- adjusting the rent to take account of increases in consumer price index (CPI)
- increasing the rent by a fixed percentage
- limiting the amount the rent may decrease
- some other method
- a combination of the above.

### **8.3 Payment of rent and non-compliance with the lease**

Leaseholders are required to pay rent monthly in advance or in accordance with the terms of the lease. The department will pursue unpaid rent or non-compliance with the lease in accordance with the lease terms.

## **9 Lease requirements**

The department requires leaseholders to enter into a lease on the department's standard terms (which the department may amend from time to time). Potential leaseholders should request a copy of the department's standard lease. Prospective leaseholders should consider the full extent of the requirements as detailed in the lease document before entering the lease and seek legal advice in relation to the terms of the lease.

### **9.1 Sub-leasing**

The department will only consider consenting to a sublease once the leaseholder has lodged a formal proposal to sub-lease in accordance with Section 5 and the lease.

The department will require the leaseholder and successful sub-leaseholders to comply with the conditions of the head lease. These conditions may require, but are not limited to, the following:

- that the leaseholder and sub-leaseholder only operate a limited range of land use types
- that the leaseholder pay additional rent to the department as a proportion of any sub-lease rent revenue
- that the leaseholder remain liable for any breaches of the head lease contract by the sub-leaseholder.

### **9.2 Assignment of a lease**

The department will only consider consenting to the assignment of a lease once the leaseholder has lodged a formal proposal to assign a lease in accordance with Section 5 and the lease.

The department will require the outgoing leaseholder (assignor) to fulfil any outstanding obligations such as unpaid rent or works under the lease, unless the incoming leaseholder (assignee) agrees to fulfil those obligations in writing to the satisfaction of the department.

### **9.3 Indemnity and insurance**

The department will require leaseholders to indemnify the department against any claim, damage, injury, action, liability or loss arising from its occupation of the premises and maintain public liability insurance, which notes the department's interest in the premises. Please refer to the department's State-managed Boat Harbour Rent and Fee Schedule for the minimum requirements for public liability insurance, which will be amended from time to time.

The department will determine (in its sole discretion) the minimum insurances requirements (e.g. workers compensation, property insurance and maritime insurance etc.) for each lease on a case-by-case basis after considering the nature of the proposed use. The department will require leaseholders to provide the department with a copy of the relevant insurance policies and the certificate of currency before entering into possession of the premises.

#### **9.4 Capital works**

If a leaseholder proposes to undertake capital works, it must:

- obtain the department's prior written approval before undertaking the capital works
- obtain all necessary planning and legal approvals and consents before undertaking the capital works
- fulfil all other obligations imposed by the department, including for example construction and completion timing
- comply with all the terms and conditions of the lease.

#### **9.5 Maintenance obligations**

Leaseholders are required to maintain and keep in good repair and condition all property, infrastructure and assets on the premises (whether or not those items are owned by the leaseholder or the department). Leaseholders must also ensure all property infrastructure and assets on the premises are in good repair and condition at the end of the lease.

#### **9.6 Outgoings**

Leaseholders will be required to pay outgoings as required by the terms of the lease.

#### **9.7 Value of improvements**

The department will not pay compensation at the end of a lease term for improvements to the premises undertaken by the leaseholder.

#### **9.8 Bond and bank guarantee**

The department will require leaseholders to provide an unconditional bank guarantee as security to ensure compliance with the lease. In some circumstances, the department may also require a personal guarantee from the leaseholder or a third party.

#### **9.9 Agreement to lease**

The department may choose to only enter into a lease with a prospective leaseholder once the leaseholder has fulfilled certain requirements such as planning approval or securing finance. The department may be willing to formalise this conditional offer to lease by entering an agreement for lease with prospective leaseholders. The department will not grant possession of, or access to, the land to the leaseholder holder until the commencement date of the lease unless otherwise formally agreed.

## **10 Terms of the lease**

The terms of any lease entered into between the department and a leaseholder will override this policy to the extent of any inconsistency. Whilst the terms of this policy will be generally applied to boat harbour leases, any final lease offer will be on such terms and conditions as the department considers appropriate.

## **11 Further information**

For further information about existing or future leases, sub-leases, assignment of leases or licenses, please contact the department's boat harbours property team at [commlease@tmr.qld.gov.au](mailto:commlease@tmr.qld.gov.au)