



COMMERCIAL LEASE POLICY

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FOREWORD

This policy is a guide for current and prospective lessees of NSW Maritime land for commercial, industrial and/or retail purposes.

NSW Maritime is constituted under the *Ports and Maritime Administration Act 1995* as a statutory authority representing the Crown. A principal function of the Authority under this Act is to manage property vested in it, including the acquisition, development, use and leasing of land for maritime commercial, industrial and recreational purposes. This includes the working harbour, waterfront businesses such as boat repairs, commercial marinas and dry boat stores, and facilities for licensed and amateur clubs.

These activities deliver major economic and community benefits for the people of New South Wales. NSW Maritime supports the continued growth of these commercial and recreational maritime facilities, within an appropriate environmental and public benefit framework.

This Policy sets broad conditions for NSW Maritime commercial leases. It aims to deliver business certainty and opportunities for renewed investment by the private sector, while ensuring a fair return for the lease of public land.

This Policy should be read in conjunction with other leasing and land use policies and procedures released from time to time by NSW Maritime and the NSW Government. For further information please visit the NSW Maritime website - www.maritime.nsw.gov.au .

Steve Dunn
Chief Executive
NSW Maritime

1 OBJECTIVES AND APPLICATION

1.1 Objectives of Policy

The objectives of this Policy are to:

- Ensure that the commercial leasing of NSW Maritime lands is consistent, transparent and impartial;
- Encourage the ongoing development of existing and new waterfront facilities for the storage, maintenance, repair and use of watercraft;
- Promote and maintain water recreation and sport including passive boating, paddling, sailboat racing and rowing;
- Provide a commercially secure environment for lessees; and
- Deliver a market-referenced commercial return for NSW Maritime.

1.2 Types of business activity to which this Policy applies

This Policy applies to uses of NSW Maritime Land for the following commercial or non-commercial activities;

- Commercial Marinas ;
- Maritime Industrial Uses;
- Operation as a Registered Club;
- Operation as a Retail outlet;
- Provision of Utilities;
- Public Access Leases (public boat ramps and slipways); and
- Amateur Club and Community Group Leases (amateur & unlicensed clubs & associations).

This Policy does not apply to:

- Residential leases, including boat sheds, boat repair facilities, jetties, marinas and reclaimed land associated with a private residence and used for a private non-commercial purpose; or
- wharves used for the temporary berthing of vessels (for example, public ferry wharves); or
- Leases administered by the NSW National Parks and Wildlife Service.

1.3 Planning consent

This Policy does not affect any requirement to obtain planning or development or construction consent under the *Environmental Planning and Assessment Act 1979* or other legislation.

Where the terms of a proposed lease require the prospective lessee to develop the Premises, all relevant approvals must be obtained before NSW Maritime will grant a lease.

In some instances, NSW Maritime may offer an Agreement for Lease or similar, which set out conditions precedent to the grant of a lease. Examples of such conditions include obtaining development consent for, 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 Premises must be maintained or renewed by the Lessee during the term of the lease.

1.4 NSW Government Procurement Policies and Guidelines

In considering a proposal to lease Land, NSW Maritime will apply the following:

- the provisions of this Policy;
- the NSW Government Code of Practice for Procurement and Implementation Guidelines and guidelines for Privately Financed Projects;
- applicable ICAC guidelines and reports relating to tendering;
- relevant laws of the Commonwealth and the State of NSW; and
- relevant policies, guidelines and directions of the NSW Government.

1.5 Legislation under which NSW Maritime acts

Relevant legislation under which NSW Maritime acts includes (but is not limited to):

- *Conveyancing Act 1919*;
- *Environmental Planning and Assessment Act 1979*;
- *Management of Waters and Waterside Lands Regulation 1972*;
- *Marine Safety Act 1998*
- *Maritime Services Act 1935*;
- *Ports and Maritime Administration Act 1995*;
- *Real Property Act 1900*;
- *Retail Leases Act 1994*;
- *Rivers and Foreshores Improvement Act 1948*.

1.6 Application of Policy

While the provisions of this Policy will generally be applied to NSW Maritime Commercial Leases, it should be noted that final lease offers will be on such terms and conditions as NSW Maritime considers appropriate. NSW Maritime is not obliged to offer a lease over its lands, or to issue new leases on the same or similar terms as any existing or previous lease.

In addition, if NSW Maritime is obliged by law to act or omit to do something, NSW Maritime may determine to depart from this Policy to the extent necessary to comply with its obligations at law.

This Policy is effective from 1 January 2008 and replaces all previous policies, procedures, guidance notes and directives in relation to matters covered by this Policy to the extent of any inconsistency.

2 Processes for granting leases

2.1 Overview

This section outlines the processes NSW Maritime will employ in selecting a lessee, and the requirements for prospective lessees in seeking a NSW Maritime Commercial Lease.

2.2 Site Assessments

Prior to offering a lease for any site, NSW Maritime will generally conduct a Site Assessment. The Site Assessment will assist NSW Maritime in evaluating

- Whether to offer land for a new or renewed lease; and
- If a new or renewed Lease is to be offered, the most appropriate category(s) of land use to be offered under that lease (see section 2.3).

A Site Assessment may comprise:

- A physical assessment of the land and the opportunities for or constraints on maritime-related activities on site; and
- An assessment of preferred uses of the land in the context of meeting NSW Government strategic objectives and legal obligations

Where Land is subject to a current lease, a Site Assessment will generally be completed not less than two years prior to lease expiry. However, NSW Maritime may initiate a Site Assessment at any time. A lessee proposing to undertake a major redevelopment may also request NSW Maritime to undertake a Site Assessment to initiate consideration of a new lease.

Where feasible, Site Assessments will be completed within three months of commencement. The information obtained during a Site Assessment may be used by NSW Maritime for any purpose, subject to any applicable commercial-in-confidence or privacy constraints.

2.3 Categories of Land use

If a new or renewed Lease is to be offered, the Site Assessment will determine one or more categories of land use to be conducted on the land. Categories of land use are outlined in Section 4.

The category(s) of land use determine the indicative lease duration and the general method of selecting a lessee (that is, competitive process or direct negotiation). Details of each category are outlined in section 4 of this Policy.

If more than one category applies to the Land, the indicative lease duration and method of selecting a lessee will be that which applies to the principal or dominant use, and the rent will be determined by totalling the rent applicable to each individual category of use covered by the Lease.

2.4 Competitive process

Where Land is to be offered for lease through a competitive process, NSW Maritime will publish specific selection criteria.

Where a competitive process is used, NSW Maritime will determine the method of selecting a lessee, having regard for:

- The proposed uses of the Land;
- the circumstances of the proposed lease;
- relevant information arising out of a Site Assessment; and
- relevant NSW Government tendering and procurement codes of practice, guidelines, policies and similar relevant material.

At its discretion, NSW Maritime may elect to conduct either an open or selective tender.

2.5 Direct negotiation

Where Land is to be offered for lease via direct negotiations with applicant(s) for a new or renewed lease, but:

- NSW Maritime and the applicant(s) cannot reach agreement within a reasonable period and on terms acceptable to both parties; or
- agreement is reached but lease documents are not signed within a reasonable period; or
- an applicant is not acting in good faith; or
- the applicant has a history of poor performance as a lessee under previous or existing leases, particularly in terms of rent payments, maintenance, required works, compliance with laws or other key provisions of a lease; or
- a probity issue arises such that direct negotiations would be inappropriate;

then NSW Maritime:

- may refuse to enter into or continue direct negotiations with the lessee(s); and
- may enter into negotiations with any other prospective lessee or may offer the Land for lease by competitive process, on such terms as NSW Maritime may decide and whether or not those terms are different to the terms discussed or negotiated previously; or
- may determine that the Land will not be leased.

2.6 Information required for new or renewed leases

Irrespective of whether Land is offered via competitive process or direct negotiation, applicants for a new or renewed lease must provide the following information to NSW Maritime when requested:

- a Business Case, as defined in the glossary of this Policy and any related procedures or guidelines issued by NSW Maritime;
- details of relevant skills and experience in the business or operation proposed to be carried out on the 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 NSW Maritime for the purpose of deciding whether or not to lease land to the prospective lessee.

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

3 Lease terms and conditions

3.1 Overview

This section sets out certain standard lease terms that will be generally applied by NSW Maritime in negotiating leases under this Policy.

3.2 Rent

Rents for commercial activities will be based on or reflect market rates. Rents will be comprised of:

- A percentage of revenue from some or all of the commercial activities undertaken on site; or
- A market valuation; or
- A value agreed between the parties; or
- Any combination of the above.

Revenue rents

Revenue rents are based on a percentage of some or all of the commercial activities conducted on the site. For the purposes of this policy, Revenue has the meaning given it in the Glossary.

Where rents are wholly or partly based on a percentage of revenue from commercial activities, the applicable percentage will be determined after consideration of market conditions, any relevant NSW Government procedures or guidelines or as the result of a competitive process.

Market valuation

Where rent is to be based wholly or partly on market valuation, that part of the rent will be subject to:

- An annual adjustment to reflect positive movements in CPI
- A regular rent review at a specified period(s) during the lease term, to ensure the lease provisions remain consistent with market rates; and
- To the extent permitted by law, a 'ratchet' clause providing that despite the methodology for the rent review, a reviewed market rent may not be less than the rent payable prior to the review.

Where a rent is determined in whole or in part as a market valuation, NSW Maritime will, at its cost, obtain an independent valuation to determine an appropriate market rent for the lease. If a lessee disputes the market rent determined by NSW Maritime, the lessee may, at its cost, obtain its own independent valuation for consideration by NSW Maritime.

If, after consideration of the two valuations, the lessee and NSW Maritime are unable to agree on the market rent a third independent valuer will be appointed

by the President of the Australian Property Institute, whose valuation of the market rent will be final. The costs of this third valuation will be shared equally by the lessee and NSW Maritime.

Where feasible, the market valuation process is to be completed within three months. The final market valuation will be considered effective from the date of commencement of the lease.

Value agreed between the parties

Agreed rent is based on an amount agreed to between the parties (for example, where a Lease is offered to the highest bidder).

Where the rent payable under the Lease is wholly or partly based on agreed rent, that part of the rent will be subject to an annual adjustment to reflect positive movements in CPI.

General provisions

NSW Maritime may also take one or more of the following into consideration in determining the rent payable under any of the methods outlined in this Section 3.2:

- Any significant infrastructure investment or capital works proposed to be carried out during the lease term;
- the nature, size and complexity of any proposed development on the Land;
- the commercial return expected from the lease, having regard to existing market conditions;
- any agreed initiatives to provide particular public benefits, services or facilities; and
- relevant legislation.

3.3 Audit requirements for leases involving Revenue rents

It will be a standard Lease condition for leases involving Revenue rent that lessees provide accounts and relevant taxation documents within five months of the end of each financial year, sufficient to determine the Revenue relevant income from commercial activities carried out on the site.

At a time or times of NSW Maritime's choosing but not more than once every five years, NSW Maritime will require from the lessee such information and documentation as is considered necessary in order to have the Revenue audited by an independent auditor.

If an independent audit reveals that the Revenue has been underestimated by a material amount, appropriate adjustments will be made to past and future rent payable and the Lessee must pay NSW Maritime's costs in obtaining the independent audit. At NSW Maritime's discretion, leases will also contain additional penalties for breaches identified by an independent audit.

3.4 Capital works

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

NSW Maritime may agree to incentives for investment in capital works. These may commence at the start of a lease (for example, a rent-free period while capital works are undertaken), be ongoing (for example, an overall rent discount, or a longer lease term) or at the conclusion of works (for example, a partial rental rebate on completion of construction).

A proposal for a significant capital works program may also be a consideration in determining prospective lessees during a competitive process to select a lessee for a NSW Maritime commercial site.

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

- Prior written approval has been obtained from NSW Maritime;
- 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, NSW Maritime 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.

3.5 Maintenance obligations

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

3.6 Indemnities and Insurance

Lessee's will be required to indemnify NSW Maritime against any action, liability or loss arising from their occupation of the Land.

Lessees must at their expense maintain insurance against all foreseeable risks relating to their occupation of the Land, including (but not limited to) public liability, workers compensation and premises insurance. Policies may be taken out in the joint names of NSW Maritime and the Lessee, or in the name of the lessee with Maritime's interest noted.

3.7 Goodwill and Residual Value of Improvements

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

3.8 Legally binding relationship

No lease or agreement to lease (or variation of an existing lease or agreement to lease) will be legally binding on either party unless it is in writing and is signed by authorised representatives of the parties concerned.

3.9 Agreement to lease

If a formal lease cannot be entered into until certain events have occurred (for example, planning approvals are obtained or capital works completed), NSW Maritime may offer the prospective lessee an Agreement to Lease.

3.10 Subleases

NSW Maritime supports the subletting of all or parts of premises for maritime-related activities, and recognises that subleasing is primarily a commercial matter for the leaseholder.

All sub-leases and other sub-tenancy arrangements will require prior written notification to NSW Maritime and must be consistent with the terms of the head lease, including any changes that may apply to that head lease from time to time. At the discretion of NSW Maritime, this may require renegotiation of applicable elements of the head lease.

Lessees of NSW Maritime will be liable for any breaches of lease conditions caused by sublessees.

3.11 Transfer or assignment of a lease

Proposed lease transfers and assignments will require the prior written approval of NSW Maritime, which will not be unreasonably withheld

The proposed transferee or assignee must provide evidence to the reasonable satisfaction of NSW Maritime of the matters set out in section 2.6 of this policy.

Prior to any proposed assignment or transfer, the outgoing lessee must rectify any breaches of their obligations under the Lease, including defaults in maintenance, rent payments or any other financial matter, unless the proposed transferee or assignee agrees in writing to meet the outgoing Lessee's obligations.

Transfer or assignment of a lease will not generally involve a variation of Lease conditions unless the incoming Lessee requests such a variation or it would have otherwise occurred at that time regardless of the transfer or assignment.

The creation of any estate, interest or encumbrance in relation to the Premises will require the prior written approval of NSW Maritime, on such terms and conditions as it considers appropriate.

3.12 Securities

NSW Maritime may require some form of security in order to ensure the Lessee's compliance with rental and/or maintenance obligations under a lease. This will usually take the form of a bond, bank guarantee or similar, on terms and for an amount acceptable to NSW Maritime.

Where NSW Maritime requires a bank guarantee, it will generally be for an amount equivalent to up to six months rent for the premises, except in exceptional circumstances where additional securities may be required.

Exceptional circumstances may include (but are not limited to):

- Where the structures on the Land have unique heritage significance or maintenance obligations such that it is reasonable to expect that additional security is required to ensure that they are adequately maintained;
- where the lessee has a history of non-compliance with previous lease terms; and/or
- where the Lease is for the temporary use of land and it is a condition of the lease that substantial structures must be removed at the conclusion of the lease term.

In exceptional circumstances, NSW Maritime may also require the directors of a lessee company to provide personal guarantees to protect the interests of NSW Maritime.

3.13 Ownership and removal of improvements

As under the Torrens system NSW Maritime legally owns any structures affixed to its Land, 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 NSW Maritime.

However, leases 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 NSW Maritime.

3.14 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 six months' notice in writing.

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

3.15 Default

Persistent breaches of essential lease terms or conditions (such as persistent failure to pay the applicable rent) will entitle NSW Maritime to certain remedies, including commencing action to terminate the Lease.

3.16 Access to Premises

NSW Maritime, its agents or contractors may access the Premises for the purposes of:

- carrying out a Site Assessment; or
- allowing prospective lessees or purchasers to inspect the Premises or Land;

or for any other purpose in the carrying out of NSW Maritime's statutory responsibilities or ensuring compliance with essential lease terms.

3.17 Dedication of Land

NSW Maritime may not impose a condition in any commercial lease which requires the lessee to dedicate land (or any interest in land) to the Crown or other public authority (including NSW Maritime itself), without the written approval of the Chief Executive.

4 Categories of Leases

4.1 Overview

Leases offered by NSW Maritime under this Policy will be for one or more of the following categories of land use:

- Commercial Marina;
- Maritime Industrial;
- Registered Club;
- Retail;
- Utilities;
- Public Access (public boat ramps and slipways); and/or
- Amateur Club and Community Group (amateur & unlicensed clubs/associations).

The determination of land use categories to be offered at any particular site will be at the discretion of NSW Maritime. Where multiple categories of land use are proposed for a single site, these will generally be incorporated into a single lease document.

The indicative lease provisions outlined in this section are a guide only and will in all cases be subject to the content of the Business Case submitted by the prospective lessee.

NSW Maritime is not obliged to offer a Lease on terms or conditions consistent with any existing or previous lease.

4.2 Commercial Marina

A Commercial Marina Lease relates to the use of NSW Maritime land for the operation of a commercial marina offering short- or long-term recreational and/or commercial vessel berths to the boating community for a fee.

Where an existing Commercial Marina lease expires, NSW Maritime will generally seek to negotiate a renewal with the existing lessee(s). This is subject to the provisions of Section 2 of this Policy.

Where a lease for a Commercial Marina is to be offered for a site upon which there is no current or recently expired lease for that activity, NSW Maritime will generally conduct a competitive process. However, if the adjoining landowner/occupier has exclusive access to the proposed marina site, NSW Maritime may conduct lease negotiations via direct negotiation with that owner/occupier.

In all cases, NSW Maritime will assess applications for a new or renewed lease on the basis of the prospective lessee's Business Case.

Rent for Commercial Marina leases will be based on a percentage of Revenue from all or part of the operation of a commercial marina (such as the berthing of vessels and income to the lessee from marine brokerage) as outlined in section 3.2 "Revenue Rents".

To encourage the provision of marine refuelling points, NSW Maritime may agree to a reduction in rent of a value agreed between the parties.

Where a Registered Club also operates a Commercial Marina (whether open to the general boating community or exclusively for Club members), the rent payable for that part of the Club's operations will be calculated on the same basis as rent payable for a Commercial Marina lease. In these circumstances, where Revenue associated with the marina cannot be separately determined, NSW Maritime may impute and apply Revenue for the commercial marina operations as the means of determining the applicable rent for the commercial marina component of the Registered Club lease.

An indicative term for Commercial Marina Leases will be 25 years.

4.3 Maritime Industrial

A Maritime Industrial Lease relates to the use of NSW Maritime land for the purpose(s) of providing 'working harbour' services such as commercial boat repairs, salvage, marine infrastructure installation and maintenance. Maritime Industrial Leases do not include boat sheds or boat repair facilities operated on a private non-commercial basis or in association with a private residence.

In offering a lease for Maritime Industrial uses, NSW Maritime may specify particular 'working harbour' services to be conducted on the Land, on the basis of developing an appropriate mix of maritime industries to service local or regional recreational and/or commercial boating.

Where a new Maritime Industrial Lease is to be offered by NSW Maritime, this will generally be via a competitive process. However, where the proposed Maritime Industrial site can only be accessed via land in adjoining privately owned or exclusively occupied land, NSW Maritime may enter direct lease negotiations with the adjoining land owner/occupier.

Rent for land uses in the Maritime Industrial Lease category may be determined as a percentage of Revenue, a market valuation of the Land, an amount agreed between the parties, or a combination of these methods as outlined in Section 3.2. However, Revenue rents will generally only be applicable in circumstances where the majority or all of the income-generating activities occur on the site leased from NSW Maritime.

An indicative term for Maritime Industrial Lease will be 20 years but may vary significantly having regard to the level of capital investment proposed.

Aquaculture leases

The category of Maritime Industrial also leases includes Aquaculture leases. NSW Maritime may lease shore-based facilities for the sole purpose of aquaculture activities.

Aquaculture leases may be offered for an indicative period of 25-years provided the facilities are directly and solely associated with commercial aquaculture.

The indicative rent for an aquaculture leases is:

- Rent of \$3.50 per square metre of usable land; or
- Rent of \$1.50 per square metre if the site does not have water and road access.

4.4 Registered Club

A Registered Club Lease relates to the use of NSW Maritime land for the operation of a club or clubs registered under Part 2 of the *Registered Clubs Act 1976*, for the provision of facilities for recreation, dining, entertainment and any other activities associated with the operation of that club, and the provision of water-based recreational facilities and services (such as sailing).

To be eligible for a Registered Club Lease, a club must:

- Have current registration under Part 2 of the *Registered Clubs Act 1976*; and
- Conduct an active and continuous program of water-based recreational activity for the benefit of its members and/or the community at large.

It will be a fundamental breach of a lease issued under this Section 4.4 if in the reasonable opinion of NSW Maritime the lessee ceases to satisfy either or both of these conditions.

Where a Registered Club also operates a Commercial Marina (whether open to the general boating community or exclusively for Club members), the rent payable for that part of the Club's operations will be calculated on the same basis as rent payable for a Commercial Marina lease. In these circumstances, where Revenue associated with the marina cannot be separately determined, NSW Maritime may impute and apply Revenue for the commercial marina operations as the means of determining the applicable rent for the commercial marina component of the Registered Club lease.

Registered Club lease renewals will generally be conducted via direct negotiations with the existing lessee(s).

Indicative rental for Registered Club Leases will be based on a percentage of Revenue within the leased area, being the sum of Part One and Part Two below:

- Part One:
 - For revenue between \$1 and an average of the total reported figure for income-generating activities on the Land for the three financial years preceding 1 July 2006 – 2.5%; and
- Part Two
 - For revenue above the figure referred to above – 5.0%

At its discretion, NSW Maritime may elect to exclude income from bequests and large donations in the calculation of Revenue for this category of lease.

NSW Maritime encourages its Registered Club lessees to invest in the provision of water-based recreation for the benefit of members and/or the wider community. At its discretion, NSW Maritime may offer to deduct any such investment from the calculation of annual Revenue for the purposes of determining that year's rent. This concession will be dependent upon the provision by the lessee of separate and transparent financial records demonstrating the allocation of funds for this purpose, and only where NSW Maritime is satisfied that the amount claimed to be spent on water-based recreation has actually been spent. The maximum deduction permitted under this provision is 10% of club Revenue in any one year.

An indicative term for Registered Club Leases will be 25 years.

4.5 Retail

A Retail Lease relates to the use of NSW Maritime land for a lease in accordance with the *Retail Leases Act 1994*. Examples of Retail Leases offered by NSW Maritime include premises for the provision of food or entertainment (other than by a Registered Club), a takeaway food outlet on a public ferry wharf, or a privately-owned waterfront restaurant.

Subject to the *Retail Leases Act 1994*, NSW Maritime Retail Leases will be offered via direct negotiation in the first instance. Where these negotiations fail to generate a satisfactory outcome in accordance with this Policy, NSW Maritime will generally conduct a competitive process.

New Retail Leases (that is, Retail Leases for sites upon which there is no current or recently expired Retail Lease) will generally be awarded via competitive process.

Rents for land uses in the Retail Lease category may be determined as a percentage of Revenue, a market valuation of the Land, an amount agreed between the parties, or a combination of these methods as outlined in Section 3.2.

For small retail premises (for example, takeaway outlets or kiosks on public wharves), an indicative lease term will be ten years. For large retail premises (for example, waterfront restaurants), an indicative lease term will be ten years if the lease arises from direct negotiation, or twenty years if the Lease results from a competitive process.

4.6 Utilities

A Utilities Lease relates to the use of NSW Maritime land for a non-marine industrial or commercial purpose, such as communications, power or water supply, whether by a public utility provider or the private sector, and where no income-generating activity is directly conducted on the land that is subject to the lease. Examples of NSW Maritime Utilities leases include a water intake channel for a power station, or a lease for land upon which a telecommunications tower is constructed.

By their nature, Leases in this category are generally of value only to a single prospective lessee. NSW Maritime will generally negotiate such leases directly

with the prospective lessee, or offer first right of refusal to the existing lessee(s) in respect of the re-leasing of Land for the purposes of a Utilities Lease.

The decision to offer a new or renewed lease for Utilities purposes is at the sole discretion of NSW Maritime.

Unless otherwise directed by government policy or decisions, Utilities Leases will generally be offered on the basis of a value agreed between NSW Maritime and the existing or prospective Lessee.

4.7 Public Access Leases (public boat ramps and slipways)

A Public Access Lease relates to the use of NSW Maritime land by a community organisation, interest group, unregistered club or local or State government agency for the provision of maritime facilities available to the general public free of charge or for a nominal fee.

Boat ramps/baths provided by local councils to the general public fall within this category. However, sites subleased by local councils for exclusive use (eg rowing clubs) are not included.

Leases to Registered Clubs do not fall within this Category. Registered Club Leases are outlined in section 4.4 of this Policy.

By their nature, leases issued for Public Non-Commercial purposes are provided as a public service and have no or minimal realisable commercial value. For such leases NSW Maritime will apply an annual rent of four hundred dollars indexed annually.

An indicative term for these Leases will be five years. At its discretion, NSW Maritime may also offer one or more options for additional five year terms.

4.8 Amateur Club and Community Group Leases (amateur and unlicensed clubs and associations)

An Amateur Club and Community Group Lease relates to the use of NSW Maritime land by amateur/unregistered clubs or community associations for the provision of maritime facilities to which the general public does not have access except as a member of the club or association or on payment of a fee.

Leases to Registered Clubs do not fall within this Category. Registered Club Leases are outlined in section 4.4 of this Policy.

Lessees under this category include:

- *Community service organisations* – non-profit organisations that exist primarily to service a particular community, are reliant on external funding support and do not have the capacity to generate significant income. This group does not engage in any form of commercial activity. Scouts and Guides are examples of organisations that fall into this group
- *Specific interest groups* – non-profit organisations that undertake sporting or recreational activities and are reliant on member fees, school fees or community fundraising. The organisation does not undertake commercial activities to generate additional revenue. This group includes schools and amateur rowing, sailing and fishing clubs.

For such leases NSW Maritime will apply an annual rent of four hundred dollars indexed annually.

An indicative term for these Leases will be five years. At its discretion, NSW Maritime may also offer one or more options for additional five year terms.

4.9 Subleasing

Where a sublease is created on Land leased by NSW Maritime, the head lessee's rent will increase either by a proportion of the rent payable by the sublessee, or by a fixed amount agreed between NSW Maritime and the head lessee, but not on the basis of a percentage of sublessee turnover.

Subleases are not subject to the indicative lease durations outlined in this Policy, but may not be for a term that would extend beyond the expiry of the head lease.

4.10 Summary

Subject to this Section, a summary of indicative rates and options for determining rentals is:

| <u>Category of Lease</u> | <u>Indicative Duration</u> | <u>Rental methodology</u> |
|----------------------------|----------------------------|--|
| Commercial Marina | 25 years | Percentage of revenue |
| Maritime Industrial | 20 years | Market valuation and/or market rate and/or percentage of revenue |
| Aquaculture leases | 25 years | Fixed rate per square metre (See 4.3) |
| Registered Club | 25 years | 2.5% - 5% of revenue (except for commercial marina operations) |
| Retail | 10 or 20 years | percentage of revenue, and/or market valuation, and/or market rate |
| Utilities | n/a | Value agreed between the parties |
| Public Access/Amateur Club | 5 years | \$400 per year (in 2007), plus CPI |

Attachment A

Glossary

Amateur Club and Community Group means:

- community service organisations, being non-profit organisations that do not engage in commercial activity and operate primarily to service the community or an under privileged group or disadvantaged group and which is reliant on external funding support and does not have the capacity to generate significant income; and
- specific interest groups, being non-profit organisations that undertake sporting or recreational activities and rely on members' fees, school fees or community fund raising to fund its activities and do not engage in significant commercial activities to raise funds, nor have significant capacity to generate income.

Business Case means a document or series of documents setting out the details of the business and/or operations the Lessee proposes to carry out on the Land, including (but not limited to) details of any proposed major capital investment and/or proposed maintenance works. Where a Revenue rent is to be applied, a Business Case must also include details of costs of setting up, developing and running the business/operation and the estimated Revenue for the purpose of calculating the rent payable under the Lease and/or the Lease term.

Commercial Marina means a marina offering short- or long-term berthing services to the general public for a fee, including as supporting activities the minor repair, maintenance, refuelling and/or brokerage of new and used vessels.

Harbours means Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour.

Land means:

- Land vested in NSW Maritime, including reclaimed lands and the beds of the Harbours; and
- Any other lands vested in or transferred to NSW Maritime from time to time,

and includes structures and improvements fixed to the Land.

Maritime Industrial generally means the provision of 'working harbour' services including boat repairs, salvage, marine infrastructure installation and maintenance;

Maritime-related activities includes commercial activities associated with:

- the construction, repair, maintenance, storage, sale or hire of boats; and/or
- fuelling, sewage pumpout or other services directly related to boating; and/or
- the launching or landing of boats, such as slipways or hoists; 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;

but not the use of land or provision of activities for a private non commercial purpose.

Material has the same meaning as in Australian Accounting Standard 1031.

NSW Maritime means the Maritime Authority of New South Wales constituted under the *Ports and Maritime Administration Act 1995*.

Premises means the Land, or part of the Land comprising the premises leased or to be leased.

Public Access Leases generally means leases of Land by community service organisations, local councils, specific purpose community groups, volunteer sporting and recreational clubs where the public can access and use the facilities or services for a nominal or no charge.

Retail Lease means a lease of Land for shops or small office or 'back of house' space for retail activities, tourist activities including restaurants, catering facilities, bars, hospitality operations and similar uses.

Registered Club means a club registered under Part 2 of the *Registered Clubs Act 1976*.

Revenue means:

- the gross revenue of the business or operations of the lessee including all income-generating activities such as the sale of goods or services as well as grants, sponsorships and donations but not including gaming machines authorised under the *Gaming Machines Act 2001*; and
- the net revenue from gaming machines licensed or authorised under the *Gaming Machines Act 2001*).

For the purposes of this Policy gross revenue will be determined based on such documentation as NSW Maritime reasonably requires and certified by an auditor.

Site Assessment means a site assessment of the relevant Land for the purposes of determining the most appropriate maritime or commercial use(s) of the Land, whether to offer a new or renewed lease for the Land, and/or the category or categories of lease to be offered.

Structures means anything built, erected or placed on NSW Maritime land.

Utilities Lease means the lease of land for use for non-marine industrial or commercial operations such as communications, power or water supply, whether by a public utility provider or the private sector, and where no income-generating activity is directly conducted on the land that is subject to the lease provision such as communications, power and water and also for private facilities necessary to enable a public utility service provider to carry out its operations as a public utility.

Vessel has the same meaning as in the *Ports and Maritime Administration Act 1995*.
