

REQUEST FOR EXPRESSIONS OF INTEREST

Kimberley Ports Authority (KPA)

Lease - Port Drive West



**Closing Time: 21 April 2015 at 16:00 pm
(Western Standard Time)**

Contact Officer: Sean Mulhall

Commercial Manager
Kimberley Ports Authority
PO Box 46
Broome WA 6725

commercialmanager@kimberleyports.wa.gov.au

REQUEST FOR EXPRESSIONS OF INTEREST – PORT DRIVE WEST

1. Background

- (a) KPA manages and controls the Port of Broome (**Port**) which includes land in close proximity to the Port. The Port is strategically placed to service growing industries in the Kimberley including:
 - (i) On-shore and off-shore oil and gas exploration and development;
 - (ii) Live cattle export;
 - (iii) Mineral export; and
 - (iv) General cargo import and export.
- (b) A copy of KPA's 2014 annual report is annexed to this Request for Expressions of Interest and marked "A".
- (c) KPA has obtained heritage and vegetation clearances over approximately 15 hectares of land located on the western side of Port Drive, approximately 2 kilometres from the base of the Port of Broome Wharf (**Land**). Aerial photographs and a plan of the Land are annexed to this document and marked "B".
- (d) KPA seeks Expressions of Interest from parties interested in leasing the whole or part of the Land from KPA.
- (e) Respondents are to assume that the common area works required to develop the Land have been provided.
- (f) The common area works include:
 - (i) clearing of the common user access road and common area drainage;
 - (ii) construction of a common user access road;
 - (iii) construction of a crossover to Port Drive;
 - (iv) construction of common area lighting;
 - (v) installation of common area sewerage pipeline (the lots may be connected to a bio treatment facility within the next 2 years);
 - (vi) installation of common area water reticulation, including provision for fire hydrants;
 - (vii) construction of common area drainage; and
 - (viii) common area landscaping,

(Common Area Works).
- g) The Land is adjacent to Port Drive which is a main road. An Existing Services Report is annexed to this Request for Expressions of Interest and marked "C". As stated above, parties are to assume the Common Area Works have been completed. However, if the respondent is likely to have special requirements in relation to power or water, then the requirements are to be specified in the Expressions of Interest response. It is likely that lessees will be required to contribute to costs incurred by KPA in providing and

maintaining the Common Area Works on a relevant proportion basis. Further details will be provided once KPA has greater certainty around the likely costs.

- h) Upon completion of the Expressions of Interest review process, KPA will resolve on a leasing strategy for the Land. It is likely that following the assessment of the Expressions of Interests received, KPA will request proposals to lease the whole or part of the Land from one or more of the parties which have responded to the request for Expression of Interest.

2. Information and Deemed Warranty by Respondents

- (a) The information in this Request for Expressions of Interest is provided for the convenience of respondents. While KPA has taken reasonable steps to ensure that the information is accurate, it cannot and does not represent or guarantee the accuracy or completeness of the information.
- (b) Respondents should use the information provided for general guidance only. In submitting Expressions of Interest, each respondent will be deemed to warrant that it has not relied on the information provided and has undertaken its own investigations into, and fully accepts, the risks involved in leasing the Land from KPA.

3. Scope of Proposed Agreement

3.1 Basic Agreement terms and conditions

- (a) KPA is considering leasing the Land on terms which will include the following:
 - (i) **Term:** A term inclusive of options of up to 50 years will be considered;
 - (ii) **Permitted Use:** Port related services. It is a requirement that the services offered by the respondent facilitate trade through the Port and that the respondent actively trade;
 - (iii) **Rent:** Respondents to propose a rent on an unimproved ground rental basis;
 - (iv) **Outgoings:** Respondent to pay all utilities including rates and usage for telecommunications, water and power consumed;
 - (v) **Operating Expenses:** Rates and Taxes, together with insurance as set out in the model lease, a copy of which is annexed to this Request for Expressions of Interest and marked “D” (**Model Lease**) are payable by the respondent. A schedule showing a broad estimate of Rates and Taxes is annexed and marked “E”;
 - (vi) **Clearances:**
 - A. Heritage clearances have been obtained. The respondent may have to pay to have heritage consultants present during earthworks on the Land.
 - B. A vegetation clearance permit has been obtained from the Department of Environment Regulation and the Land has been cleared.
 - C. The clearing of the Land was referred to and the Commonwealth Department of Environment which determined that the clearing

was not a controlled action provided certain conditions met.

- (vii) **Services Connection:** The respondent will need to pay the costs associated with connecting to services including KPA's bio sewage system;
 - (viii) **Development Period:** Land is to be developed within 1 year from the date of signing the Lease;
 - (ix) **Performance Guarantee:** A bank guarantee equivalent to 3 months rent will be required;
 - (x) **Storm Water Drainage:** The respondent will need to ensure that:
 - A. the water drainage system for the site minimises outflow and meets the requirements set out in the Federal Department of Environments approval and KPA's Tenant Environmental Management Plan. Copies of these documents are available on request; and
 - B. systems satisfactory to KPA are in place to control pollution;
 - (xi) **Environment:** The respondent will need to pay for the costs incurred by KPA in having a baseline environmental survey of the relevant lot carried out. The respondents will also need to meet the standards set out in KPA's Tenant Environmental Management Requirements (**TEMR**). A copy of the TEMR is annexed and marked "F"; and
 - (xii) **Crossovers:** Tenant to construct crossovers to Main Roads and KPA's requirements.
- (b) The likely terms and conditions of KPA's preferred Lease are set out in the Model Lease.
- (c) **Other provisions**
- KPA notes the following preferences and the respondent is directed to fully consider these preferences along with the other preferences outlined in the Model Lease:
- Not Any.

4. Inspection of the Land

The respondent may inspect the Port and the Land by prior arrangement with KPA. The respondent should contact KPA's contact officer listed on the front page of this document to arrange an inspection time.

5. Process

Respondents will have until 16:00 pm (Western Standard Time) on 21 April 2015 to provide an Expression of Interest. The respondent's Expression of Interest will (*inter alia*) need to address the following items:

- (a) the Rent proposed;
- (b) the Proposed Term of the Lease and any options;

- (c) the Proposed Use;
- (d) the area of land which the respondent wishes to lease;
- (e) whether the respondent is a local business operator; and
- (f) the date on which the respondent would be able to commence developing the Land.

If KPA is satisfied with the Expressions of Interest process, it is the intention of KPA to then formally request proposals to lease the whole or parts of the Land.

KPA is under no obligation of any kind to select any Expression of Interest submitted during the Expression of Interest process as a preferred tenant and KPA is not bound to select the highest rent proposal as a preferred Expression of Interest and may reject any or all of the Expressions of Interests submitted.

KPA reserves the right at any time to postpone, cancel, abandon, vary, supplement or replace any process that may be initiated by this Expressions of Interest process.

6. No contract is binding until written and executed

No lease or contract of any kind shall arise between KPA and any respondent unless and until the terms of a written agreement that are acceptable to KPA have all been reduced to writing in a single document and signed by both KPA and the successful respondent (if any).

7. Proposals and Schedules

All Expressions of Interest must be in writing in order to constitute a conforming Expression of Interest and each respondent must complete each schedule to this Request for Expressions of Interest.

8. Closing Time and Date and Method of Submitting Expressions of Interest

- (a) The closing time and date for the submission of proposals is:

21 April 2015 at 16:00 pm (Western Standard Time)

- (b) Proposals are to be marked:

**Port Drive West
Expressions of Interest**

Confidential

Sean Mulhall
Commercial Manager
Kimberley Ports Authority
PO Box 46
Broome WA 6725
commercialmanager@kimberleyports.wa.gov.au

- (c) Respondents are urged to carefully read the clauses dealing with lodgement of Expressions of Interests and late lodgement of the Expressions of Interests. Respondents are advised:
 - (i) to complete Expression of Interest well in advance of the closing date to

- allow time for mailing; and
- (ii) to ensure that courier services are given sufficient time to deliver proposals and that they confirm delivery.
- (d) Respondents are to provide one complete hard copy of their Expression of Interest. An electronic copy is also to be emailed to the contact officer prior to the closing date and time.
- (e) If in doubt call KPA's contact officer listed on the front page of this document for advice and assistance concerning lodgement.

9. Late Expressions of Interest

KPA, in its absolute discretion, may reject any Expression of Interest received after the stipulated closing time and KPA reserves its right to reject one or more late Expressions of Interest and accept for consideration late proposals in its absolute discretion.

10. Expression of Interest Costs

Respondents shall meet all costs of preparing and submitting Expressions of Interest.

11. Uncompetitive Behaviour

By submitting an Expression of Interest, each respondent warrants that neither it nor any of its personnel or related entities have engaged in any uncompetitive behaviour or any other practice which denies or may deny legitimate business opportunities to other respondents or other participants in the Expressions of Interest process.

12. List of Documents to be Returned

Respondents are required to prepare a written Expressions of Interest covering the points outlined in section 5 of this document. The following scheduled forms must also be completed in full and submitted with the written proposal as required by sections 7 and 8 in order to constitute a conforming Expression of Interest. KPA may refuse to consider any Expression of Interest that is a non-conforming proposal.

- **Schedule 1** Executed Form of Expression of Interest.
- **Schedule 2** Commercial Terms
- **Schedule 3** Statutory Declaration
- **Schedule 4** Organisational Structure
- **Schedule 5** Respondent's Experience and Past Performance
- **Schedule 6** ASIC Company Search

13. Completion of Expressions of Interest

It is the responsibility of the respondent to ensure that all parts of this Request for Expressions of Interest document issued by KPA have been received and it is the respondent's responsibility to raise any queries concerning apparent ambiguities, contradictions or conflicting information.

14. Clarification of Expression of Interest Requirements

The respondent may seek clarification of any part of this Request for Expression of Interest from KPA. Questions should be directed in writing to KPA's contact officer as follows:

Sean Mulhall
Commercial Manager
Kimberley Ports Authority
PO Box 46
Broome WA 6725
commercialmanger@kimberleyports.wa.gov.au

KPA may, on request, clarify aspects of this Request for Expressions of Interest in writing but is under no obligation to do so. Clarification responses by KPA may be distributed to other respondents in the form of an addendum to the Request for Expressions of Interest or in such other form as KPA sees fit.

15. Respondents to Inform Themselves

Without limiting anything else in this document, on submission of an Expressions of Interest, respondents shall be deemed to:

- (a) have examined and understood the Expressions of Interest documents and any other information made available by KPA to the respondent for the purpose of considering or submitting its Expression of Interest;
- (b) have examined and be fully aware of all information that could have been obtained by the making of reasonable inquiries relevant to all risks, contingencies, facts and circumstances that could affect the efficacy of the Expressions of Interest and the respondent's willingness to enter into a lease;
- (c) be satisfied as to the correctness and sufficiency of their proposals including proposed Rent and all matters and things necessary for the due and proper performance of the respondent's obligations under the Lease. Respondents must raise any queries, clarify issues or requirements and generally have a full understanding of the Request for Expressions of Interest before submitting their Expressions of Interest;
- (d) be satisfied the respondent is able to meet all costs associated with taking on a lease for the Land;
- (e) have a full understanding of KPA's objectives regarding the use of the Land.

16. Respondent's Identity

The identity of the respondent is fundamental to KPA. The respondent shall be the corporation or other legal entity named as the respondent and whose execution appears on Schedule 6.

17. No Masquerades

If the respondent is acting as agent or trustee for or jointly with another person, persons, corporation or corporations this must be fully disclosed by the respondent in the proposal. If the respondent fails to fully disclose the identity of all participants and the nature of its relationship to those participants, the respondent's Expressions of Interest may not be considered by KPA. No

one will have any right, title or interest in any agreement that arises out of the proposal process unless they have been fully disclosed to KPA in the relevant Expression of Interest.

18. Ownership of Expressions of Interest Responses

All documents, materials, articles and information submitted by the respondent as part of, or in support of an Expression of Interest shall become, upon submission, the absolute property of KPA and will not be returned to the respondent at the conclusion of the Request for Expression of Interest process. However, the respondent shall be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided in any agreement that arises out of any Expression of Interest.

19. Sub-Lease or Licence

Respondents must state if it is their intention to sub-lease or licence any part of the Land and if so, respondents must provide full details of each proposed sub-contractor in Schedule 3.

20. No Compensation

If, for whatever reason, KPA does not ultimately select any respondent as a tenant, postpones, cancels or otherwise ceases any process initiated by this Request for Expressions of Interest or does not enter into any agreement for any reason, then no respondent shall have any claim against KPA for any costs, losses or damages of any kind that may have been incurred in connection with or arising out of the preparation or submission of any Expressions of Interest or any negotiations.

KPA may postpone, cancel or abandon the Request for Expressions of Interest process at any time for any reason. If, for whatever reason, KPA does postpone, cancel or abandon the Request for Expressions of Interest process, then no respondent shall have any claim against KPA for any costs, losses or damages of any kind that the respondent may have incurred in connection with or arising out of the preparation or submission of any Expression of Interest.

Schedule 1 - Executed Form of Expressions of Interest (To be completed by respondents)

Expressions of Interest Name: Lease - Port Drive West

To: Sean Mulhall – Commercial Manager

Having examined the Request for Expressions of Interest document for the Lease of Port Drive West from KPA we express our interest in obtaining a lease for the whole/part of the Land as outlined in this Expressions of Interest and the attached schedules.

Name of corporation or legal entity proposing:

Address:

ACN

Tel No.....

Fax No.....

Signature of authorised representative and position:

Date.....

Schedule 2 - Commercial Terms (*To completed by respondents*)

An Excel spreadsheet of the Commercial Terms for this EOI is included as a separate attachment.

Schedule 3 – Statutory Declaration (To be completed by respondents)

COLLUSIVE CONDUCT STATUTORY DECLARATION

I,
(full name, address and occupation of person making the declaration)

sincerely declare as follows -

In respect of the Request for Expressions of Interest for the lease of the whole/part of Port Drive West by **(the Respondent)**

.....
(the Proposal) or any licence or contract arising from the Expressions of Interest:

- 1 I hold the position ofand am duly authorised by the Respondent to make this declaration on its behalf.
- 2 To the best of my knowledge neither the Respondent nor any of its servants or agents had any knowledge of the terms of any other respondent prior to submitting the Expressions of Interest nor has the Respondent or any of its servants or agents disclosed to any other respondent the Expressions of Interest prior to the closing of proposals.
- 3 The Respondent submitted the Expressions of Interest in good faith and to the best of my knowledge is complete and accurate in all respects.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005

at..... on.....by -
(place) (date)

.....
(Signature of person making the declaration)

in the presence of -

.....
(Signature of authorised witness)

.....
(Full name, address and qualification of authorised witness)

Schedule 4 - Organisational Structure (*To be completed by respondents*)

Respondents should provide details of its most recent audited financial statements showing a clear description of the organisational structure and the financial capability of the organisation and the organisational structure that will apply to tenancy. The respondent should also specify their registered office and principal place of business. If a trust is involved then a stamped copy of the relevant trust deed must be included.

Schedule 5 - Respondent's Experience and Past Performance (*To be completed by the respondents*)

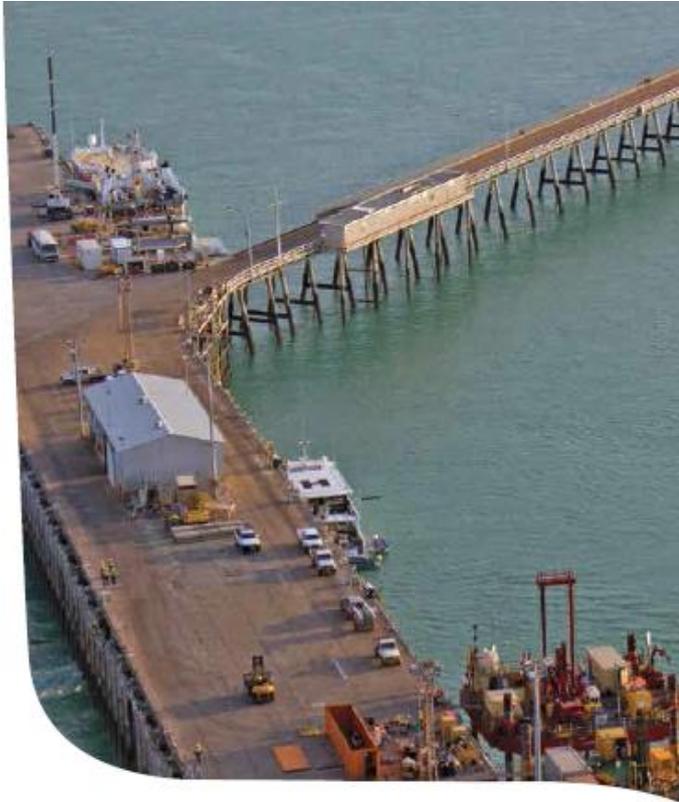
The Respondent must set out below a history of its recent experience in providing port related services and past performance as a tenant.

Schedule 6 – ASIC Search (*To be provided by the respondents*)

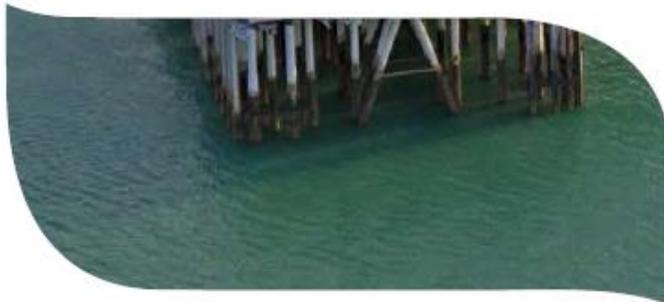
If the respondent is a company it must provide a recent search report of its ASIC records along with a copy of the relevant Certificate of Company Incorporation.

Annexure A – Broome Port Authority Annual Report 2014

A PDF copy of the Annual Report accompanies this EOI as a separate attachment.



2014
**BROOME PORT
AUTHORITY**
Annual Report



Annexure B – Aerial Photographs and Engineering Plans

A copy of the following photos and plans accompany this EOI as separate attachments:

- a) Port Drive West Drainage Plan Rev D;
- b) Earthworks Plan Rev C; and
- c) three aerial photographs showing the location of Port Drive West.

Annexure C – Port Drive West Services Report

A PDF copy of the Port Drive West Services Report accompanies this EOI as a separate attachment.



PORT DRIVE WEST EXPRESSIONS OF INTEREST SERVICES REPORT

| Date | Rev | Revision Comment | Prepared | Reviewed | Approved |
|------------|-----|-------------------|----------|----------|---|
| 05/03/2015 | A | Issued for Review | PC | SM |  |
| | | | | | |

Annexure D – Model Lease

A PDF copy of the draft Model Lease accompanies this EOI as a separate attachment.

CLAYTON UTZ

[This is a discussion draft only. Kimberley Ports Authority reserves the right to make amendments to this draft at its discretion.]

Lease

Kimberley Ports Authority
KPA

[insert]
Lessee

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Annexure E – Rates and Taxes



PORT DRIVE WEST EXPRESSIONS OF INTEREST ESTIMATED RATES & LAND TAX

File ref: LAN351_89195
Version: V1.0
Issue date: March 2015

KPA made reasonable enquiries to determine the estimated Shire Rates, Water Rates and Land Tax which could be charged for Port Drive West. The Shire Rates and Land Tax are based on square metre calculations for other port properties. The actual valuations will depend on various factors including the size of the actual lot leased.

The Information set out below is for general guidance and respondents should make their own enquiries to determine the accuracy of the figures provided.

Shire Rates: \$108,000 for 15 Ha

Land Tax: \$68,207 for 15 Ha

FESA: TBA

Water Rates: The annual service charge for water is based on the size and number of meters servicing a property.

| Size of meter | Cost |
|---------------|------------|
| Up to 20mm | \$218.05 |
| 25mm | \$340.70 |
| Up to 40mm | \$872.19 |
| 50mm | \$1,362.79 |
| 70, 75, 80mm | \$3,488.75 |
| 100mm | \$5,451.17 |
| Up to 150mm | \$12,265 |

Annexure F – Tenant Environmental Management Requirements

A PDF copy of the Tenant Environmental Management Requirements accompanies this EOI as a separate attachment.



KIMBERLEY PORTS AUTHORITY TENANT ENVIRONMENTAL MANAGEMENT REQUIREMENTS

1. General Environmental Requirements V1.1
2. Storage and Handling of Dangerous Goods and Hazardous Materials V1.1
3. Atmospheric Emissions V1.1
4. Fauna and Pests V1.1
5. Flora and Vegetation V1.1
6. Heritage V1.1
7. Land Management V1.1
8. Waste Management V1.1
9. Water Management V1.1
10. Glossary V1.1