



TENANCY CUSTOMER CHARTER

November 2021

Port of Melbourne



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A message from our CEO

I am pleased to present this Tenancy Customer Charter.

As the manager of the port, Port of Melbourne is aligned with the interests of tenants, the port industry and the Victorian Government to grow the port and deliver efficient infrastructure to ensure a sustainable and competitive supply chain.

Lease agreements with tenants vary in term but long term leases typically have a term of around 20 years or more, which gives our tenants certainty to plan and execute their business strategies in line with this objective.

This charter is designed to assist tenants in negotiating leases with Port of Melbourne that meet their bespoke operating needs, are commercially acceptable to both parties, and are struck in accordance with our obligations to the Victorian Government.

We are committed to continual improvement and working collaboratively to achieve commercially acceptable, market-based outcomes for our tenants and for the benefit of Victorian consumers.



Saul Cannon

Chief Executive Officer

1. Introduction to this Charter

1.1. About the Port of Melbourne

The Port of Melbourne is Australia's largest container, automotive and general cargo port. The port comprises 505 hectares, operates 24 hours a day, and is a central gateway for moving goods into and out of south-eastern Australia.

The port is a key contributor to Victoria's economy – supporting 19,600 jobs and around \$6 billion in value¹:

- The port handles Victorian imports and exports, various Tasmanian trades, and cargoes moved to and from South Australia and southern New South Wales (Riverina);
- The building, manufacturing, retail, food, agriculture and petroleum industries rely heavily on the port and its transport connections; and
- Each day, the port handles around 8,000 twenty-foot equivalent units (TEU)² of containers carrying a range of consumer goods, including dairy products, toys, furniture and household appliances.

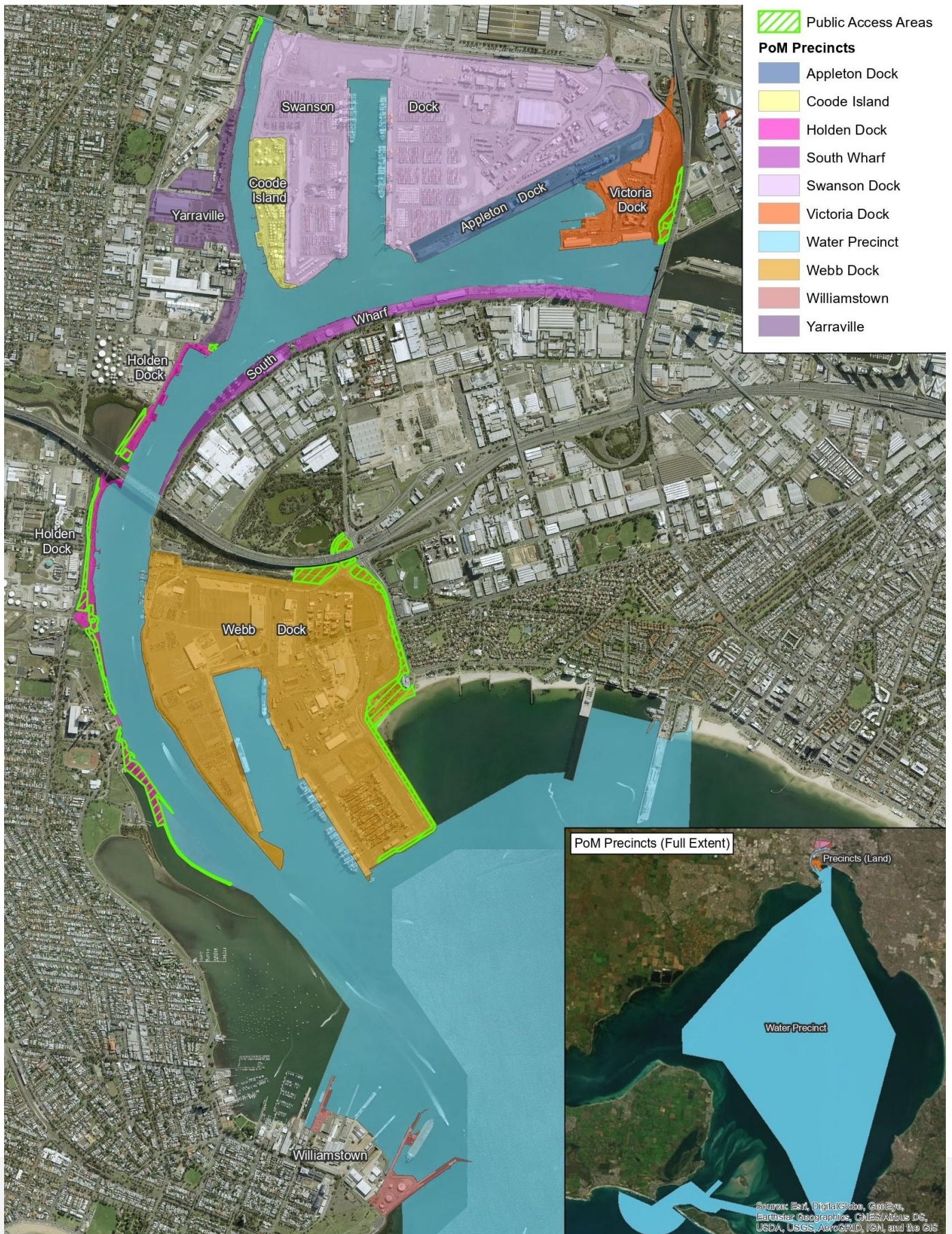
The port was previously operated by Port of Melbourne Corporation (PoMC), a Victorian Government entity. In 2016, the Port of Melbourne Group (referred to as PoM in this charter) was awarded a 50-year port sublease of the Port of Melbourne by the Victorian Government. PoM is owned by a consortium of long-term shareholders with local and global expertise in delivering world-class port and infrastructure facilities and services. More information about PoM and its shareholders is available on our [website](#).

PoM took over the management of tenant leases that were in place at commencement of the port lease. The practices and key lease terms undertaken by PoMC have generally continued to be adopted by PoM. This charter takes into account feedback from the ESC's Port of Melbourne – Market Rent Inquiry 2020.

¹ These economic findings are from the Port of Melbourne 2017-18 Economic Impact Study undertaken by BDO Econsearch and GHD.

² TEU is a standard unit of measurement for shipping containers. One TEU is one 20-foot container and hence one 40-foot container is counted as two TEU.

Figure 1: Map of Precincts & Public Areas at the Port of Melbourne, as at 2021



1.2. Processes in administering rental agreements

As part of the port lease, the Victorian Government and PoM agreed a number of obligations in relation to leases of port land³, which are formalised in the Port Concession Deed entered into between PoM and the Victorian Government. Extracts of the Port Concession Deed containing the relevant clauses concerning leases of port land are available on PoM's website.

Tenants may request additional extracts of the Port Concession Deed in relation to any clauses that the tenant considers may concern its existing lease or a new lease of port land, including any clauses which PoM informs the tenant are the basis for provisions in the lease it is proposing. Upon receipt of such request, PoM may seek the consent of the Victorian Government and the Port Lessor to provide the relevant extracts to the tenant as requested. PoM will not be obliged to provide any extracts of the Port Concession Deed unless it has received approval from the Victorian Government and the Port Lessor.

The rights and responsibilities of tenants and PoM as a landlord are negotiated for each lease to suit the specific operations and circumstances of the tenant and the planning needs of the port.

These rights and responsibilities are enshrined in leases that are often long-term, with terms typically of around 20 years or more. The long-term nature of these leases gives tenants the certainty they need to plan and execute their business strategies.

Rents, and the terms and conditions of leases, are negotiated and agreed with tenants by way of the following processes:

- **Reviewing market rents** – rents are periodically reviewed during the term of the lease to reflect the market in accordance with the terms of the lease (generally every 5 years for leases longer than 8 years);
- **New leases for existing tenants** – an existing tenant with an interest in occupying port land beyond the term of their current lease may seek a new lease by agreement; and
- **New leases for prospective tenants** – where a prospective tenant wants to occupy port land or PoM offers port land to the market.

These processes are more detailed for leases of five or more years given the complexity of these long-term agreements.

The charter outlines indicative timeframes for the key process for agreeing leases. Meeting these timeframes is a shared responsibility between tenants and PoM, and relies on both parties acting and engaging with each other in a timely and constructive manner.

From time to time, tenants or port users may have a need for a short-term lease to meet a specific operational need on a short-term basis. Where this occurs, PoM will work collaboratively with the tenant or port user to establish a bespoke arrangement for access to port land or infrastructure.

In these cases, we recognise that the processes and timeframes set out in this charter may not be practical, and we will agree upfront on appropriate processes and timeframes with the tenant, such agreement on timeframes and processes which will be in writing.

PoM commits to acting in good faith in all of its dealings with existing and prospective tenants, including in respect of processes under this charter.

³ Leases of port land offered by PoM constitute subleases under PoM's lease from the Victorian Government. This charter applies to leases of port land.

1.3. Purpose and structure of this charter

This charter has been developed to explain the rights and responsibilities of PoM, existing tenants and prospective tenants, and the processes that apply to different types of lease negotiations.

The objectives of this charter are to:

- provide transparency and predictability of negotiating processes, by explaining the steps and the timeframes involved in each process, and provide guidance on the nature and purpose of terms and conditions that are typically contained in lease agreements;
- assist existing tenants, prospective tenants and PoM in negotiating terms and conditions of leases that are commercially acceptable to both parties, by supporting a common understanding of the rights and responsibilities of the parties in different types of lease negotiations, including those which PoM must adhere to under its obligations to the Victorian Government;
- explain the mediation and dispute resolution processes that exist to support existing tenants, prospective tenants and PoM in negotiating terms and conditions of leases that are acceptable to both parties, including access to mediation and determination processes; and
- explain the compliance monitoring and disclosure regime that accompanies this charter.

The processes and timeframes for negotiations set out in this charter reflect both mandatory requirements imposed by the Victorian Government and additional, voluntary processes designed to assist PoM, existing tenants and prospective tenants to negotiate commercially acceptable outcomes.

The charter is structured as follows:

- Section 1 introduces the charter;
- Section 2 introduces the concept of a Reasonable Market Rent;
- Section 3 sets out the Market Rent Review process;
- Section 4 introduces the process for agreeing new leases;
- Section 5 sets out the process for agreeing new leases for existing tenants;
- Section 6 sets out the process for establishing new leases where a prospective tenant seeks to enter into a lease with PoM;
- Section 7 sets out arrangements for complaints handling, and voluntary monitoring and reporting on our compliance with this charter;
- Section 8 provides a glossary of key terms used in the charter and contact details for key PoM personnel;
- Appendix A sets out the process for appointment of an Independent Valuer for rental determinations;
- Appendix B sets out the valuation principles used by Independent Valuers in determining rents;
- Appendix C sets out the dispute resolution process for this charter; and
- Appendix D sets out the Bona Fide Competitive Tender Process.

Capitalised terms that appear in the charter are defined in the glossary in Section 8.3.

The charter, with the consent of the Victorian Government, may be updated from time to time to maintain its currency and reflect stakeholder feedback.

1.4. Application of charter

This charter does not apply in any respect to any Pre PLT Leases. A subsequent variation of a Pre PLT Lease will not change the nature of such lease being considered a Pre PLT Lease.

Additionally, sections 2 and 3 of this charter do not apply to any Post PLT Leases or New Leases where such leases contain provisions for fixed rent increases only.

Sections 2 and 3 of this charter apply to:

- (a) New Leases which contain provisions for a Market Rent Review, subject to the tenant electing to have the charter apply in that regard; and
- (b) Post PLT Leases which contain provisions for a Market Rent Review, subject to the tenant electing to have the charter apply in that regard.

Sections 2, 3, 4 and 5 of this charter apply to New Leases with tenants that have a Pre PLT Lease or Post PLT Lease at the port (whether or not the premises the subject of the New Lease are the same as the tenant's Pre PLT Lease or Post PLT Lease, as applicable). Sections 2 and 3 will only apply to the extent the New Lease contains provisions for a Market Rent Review, subject to the tenant electing to have the charter apply in that regard.

Sections 4 and 6 of this charter apply to all New Leases, except to the extent that a rent review opportunity exception (as outlined at section 4) applies.

Sections 7 and 8 of this charter apply to:

- (a) all New Leases; and
- (b) Post PLT Leases.

To the extent a prospective tenant wishes to opt out of the charter in accordance with Appendix D, the charter does not apply in circumstances where PoM conducts a Bona Fide Competitive Tender Process to establish a New Lease.

1.5. Effect of charter

This charter is a voluntary framework for existing tenants under Post PLT Leases (as outlined in section 1.4) and all tenants for New Leases. It will not override the terms and conditions of a binding lease unless agreed by both PoM and the tenant in writing.

PoM will notify all existing tenants who have a Post PLT Lease and any prospective tenant in relation to a New Lease of the existence of this charter. In the event a Post PLT Lease tenant or a prospective New Lease tenant does not wish to adopt the objectives and principles in this charter, then such tenant must provide written notice to PoM opting out of the charter.

Where a Post PLT Lease tenant elects to rely on sections 2 and 3 of this charter, PoM, acting reasonably, may require the tenant to enter into a deed of variation of lease with PoM to give effect to those specific provisions. A Post PLT Lease tenant is only entitled to one election and that election will apply to the remainder of the lease term.

2. Introduction to market rents and other Key Commercial Terms

2.1. How do we ensure rents are reasonable and reflect market conditions?

We are committed to ensuring that rents reflect market conditions, and support this by offering the following terms for leases:

- **Commencing Rent** | the starting rent that we offer for leases will not exceed a Reasonable Market Rent.⁴
- **Market Rent Review** | for all leases with a term longer than 8 years (including any options in favour of the tenant) we will offer to have the rent reviewed every 5 years to ensure that it reflects a Reasonable Market Rent.⁵
- **Binding Determination** | in the event that PoM and the tenant are unable to reach agreement on a Reasonable Market Rent in a Market Rent Review on an existing lease or for a new lease (except under a Bona Fide Competitive Tender Process), tenants can refer the determination of a Reasonable Market Rent to an Independent Valuer.⁶

Our offer above in relation to a Market Rent Review does not apply to leases that do not have a Market Rent Review provision (e.g. fixed increases only) or to Pre PLT Leases.

To the extent that a current lease has a Market Rent Review provision which does not provide for a Reasonable Market Rent and/or a Binding Determination by an Independent Valuer consistent with this charter, PoM will, if formally requested by the tenant and such request is documented by way of a deed of variation, apply the terms of this charter for the purposes of a Market Rent Review.

For clarity, in determining a Reasonable Market Rent for leases with a term of 5 years or less regard may be had to the short term or temporary use of the land and the level of site vacancy associated with land set aside specifically for the relevant type of use.

For leases with a term of 8 years or less, PoM may offer a Market Rent Review at year 5 noting however that the tenant and/or PoM may prefer a fixed escalation arrangement given the shorter tenure.

2.2. What is meant by Reasonable Market Rent?

The Port Concession Deed between the Victorian Government and PoM defines a Reasonable Market Rent as set out in Box 1 below. The factors that establish a Reasonable Market Rent reflect the characteristics that make a given area of port land more or less commercially attractive to different tenants.

⁴ Port Concession Deed, Clause 18.1(a)(i)

⁵ Port Concession Deed, Clause 18.1(a)(ii)

⁶ Port Concession Deed, Clause 18.1(a)(iii)

Box 1: Definition of Reasonable Market Rent

The rent that would reasonably be expected to be realised if the relevant land was offered for lease in the open market by a willing but not anxious landlord to a willing but not anxious tenant and assuming the land will be used for the permitted use under the lease, and having regard to:

- the condition that the land and any existing improvements are in at the time of the rent review;
- the location and area of the land and the proximity to relevant facilities and transport links;
- the cost of reclaiming or otherwise developing the land (including constructing improvements) and the value of any other works to be performed or incentives offered by PoM;
- the nature of the permitted use;
- the whole term of the lease, excluding options; and
- information that can reasonably be obtained about rents then applicable for tenants of the port and tenants of comparable land or premises and the value of the port land and that comparable land or premises.

Source: Port Concession Deed, Clause 18.1(c)

2.3. Other Key Commercial Terms

In addition to a Reasonable Market Rent, depending on the nature of the lease, PoM may include in a lease of port land certain Key Commercial Terms, such as:

- providing that the Reasonable Market Rent determined by a rent review cannot be less than the rent payable immediately before the date of the Market Rent Review (ratchet mechanism);
- providing for escalation of rent by more than increases in CPI between Market Rent Reviews; and/or
- requiring a separate rent or reasonable increases to the Reasonable Market Rent for improvements to the land PoM provides for the tenant's benefit.

Ratchet clauses and annual rent escalations are commonly used in commercial leases to enable landlords to offer longer lease terms to provide tenure and certainty to tenants to support tenant and landlord investment, and to provide rental certainty to landlords who forego the right to offer the lease to the market on a periodic basis.

PoM's objective is to have rents that are informed by market conditions and have regard to the underlying commercial arrangements of the lease agreement by offering existing tenants under Post PLT Leases and tenants negotiating New Leases which contain market rent review provisions and escalations in excess of CPI the option to adopt the Rent Pause Mechanism which modifies how the ratchet provisions operate and, if the tenant exercises that option, PoM will implement the Rent Pause Mechanism (which will be documented by way of a deed of variation). For the avoidance of doubt, the offer to adopt the Rent Pause Mechanism will not apply to leases which contain provisions for a fixed rent increase only.

3. Market rent review

3.1. What does the Market Rent Review process involve?

A Market Rent Review is a process where rents are reviewed periodically to ensure that they reflect market rates. In this process, PoM and the tenant will seek to agree to a market rent through negotiation, typically with the support of expert valuers to advise on market rates. In the event that PoM and the tenant are unable to reach agreement on a commercial outcome in a Market Rent Review, an Independent Valuer will be appointed at the request of either party to make a Binding Determination on the rent.

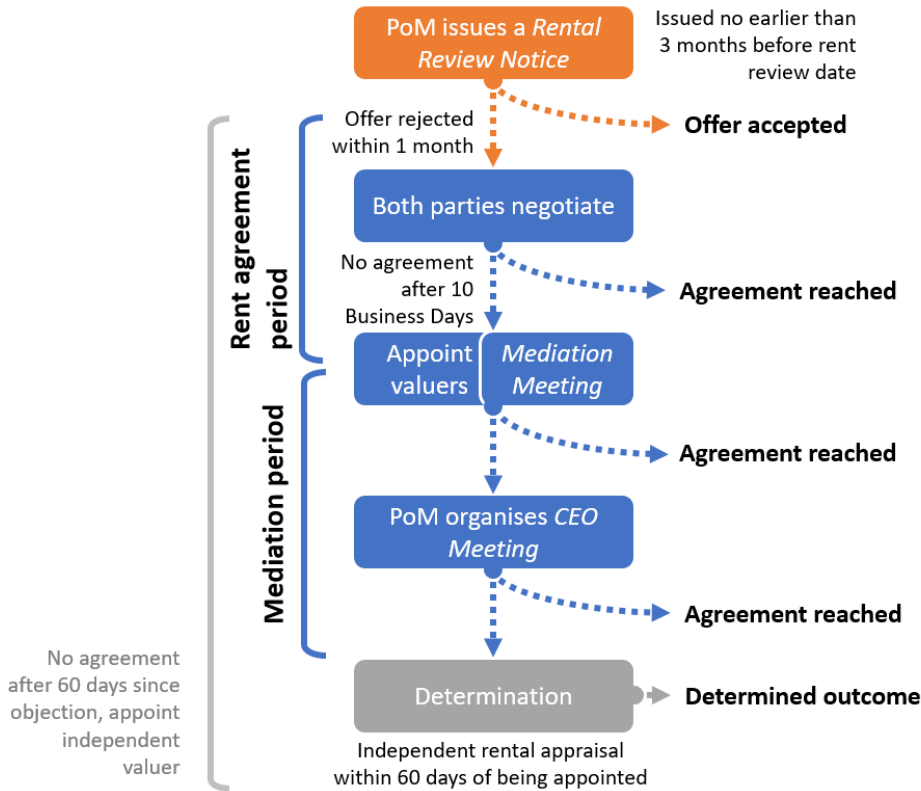
The standard Market Rent Review process and timeframes are summarised in Figure 2, noting that the process and timeframes may differ to reflect the circumstances. In circumstances where the process takes longer and proceeds past the rent review date (as that date is specified in the lease), for example where the parties agree to extend negotiations, the rent review outcome will be backdated to the rent review date.

3.2. How is a Market Rent Review initiated?

A Market Rent Review will occur on the review dates as set out in the terms of each Post PLT Lease or New Lease (as applicable).

To initiate a Market Rent Review, we will provide the tenant a written notice (a Rent Review Notice) specifying PoM's assessment of the Reasonable Market Rent. This assessment will be based on advice received from an expert property valuer (**Valuer**) engaged by PoM. The standard approach to Market Rent Reviews involves PoM initiating a market review no earlier than three months before a market review date. If PoM fails to initiate a Market Rent Review under the terms of the lease and in accordance with the above process, then the tenant can require PoM to initiate a Market Rent Review (by giving notice to PoM no later than 1 month after the rent review date). If the tenant does not object to PoM's assessment of the Reasonable Market Rent within one month of receiving the Rent Review Notice, then the rent in the Rent Review Notice will apply from the market review date. If the tenant objects to the assessment within one month of receiving the Rent Review Notice, the rent will be determined in accordance with sections 3.3 and 3.4 of this charter and the determined Reasonable Market Rent will apply from the market review date, regardless of when the determination was made.

Figure 2: Process and indicative timeframes for Market Rent Reviews



3.3. What is the process for coming to an agreement on rents?

If the tenant does not agree with PoM’s assessment of the Reasonable Market Rent, then it may object to the Rent Review Notice within one month of PoM providing it. In this case, there are a number of processes in place to assist PoM and the tenant to reach agreement.

Firstly, PoM and the tenant enter a 10 Business Day rent agreement period to attempt to agree on rent. As part of these negotiations, PoM will, upon request from the tenant, provide the Relevant Rental Band (if available) for comparable leases at the port. In these circumstances, PoM will engage a Valuer to identify comparable leases and construct the Relevant Rental Band.

If no agreement is reached within the 10 Business Day rent agreement period, then both PoM and the tenant must each appoint a Valuer within 10 Business Days to each prepare a Valuer Report on the Reasonable Market Rent to inform negotiations.

To assist negotiations, PoM will convene a Mediation Meeting, where PoM, the tenant and their respective Valuers will consult to reach agreement on the rent. Each party’s Valuer will share valuation information subject to preserving the confidentiality obligations of each party.

If, after the Mediation Meeting, agreement still cannot be reached, PoM may organise a CEO Meeting between the CEO of PoM and a senior executive of the tenant.

In addition, tenants may request the Port Lessor to attend as an observer at the Mediation Meeting and/or a CEO Meeting.

3.4. What if we can't agree on rents?

If PoM and the tenant cannot agree on the Reasonable Market Rent within a reasonable timeframe, the Reasonable Market Rent will be determined by an Independent Valuer nominated by the President of the Australian Property Institute, following the process as outlined in Appendix A. The Independent Valuer will be requested to determine a Reasonable Market Rent within 60 days of being appointed.

PoM and the tenant may each make submissions to the Independent Valuer setting out the reasons and evidence for their assessment of a Reasonable Market Rent.

PoM's Valuer will provide the Independent Valuer information about rents applicable to port land and comparable land and premises having regard to the nature and utility of the use of the premises (such as container stevedoring and other uses), the relative commercial value and utility of different precincts within the port and the utility of operation within the different precincts, on the basis that information is kept confidential by the Independent Valuer.⁷ To add transparency to this process:

- PoM will share with the tenant anonymised relevant details of all of the comparable leases on port land it intends to provide the Independent Valuer (with the rent redacted), and seek the views of the tenant on any other comparable land and premises it considers should be included;
- If PoM and the tenant cannot agree on comparable land and premises, then the Independent Valuer will be asked to assess and decide upon the appropriate comparable land and premises;
- Rents for the comparable sites, subject to anonymity being maintained, will be provided by PoM to the Independent Valuer along with its submission;
- PoM will also use all best endeavours to provide all of the relevant rental information on an anonymised basis to the tenant's Valuer, subject to any confidentiality provisions contained in relevant leases (noting that PoM will use best endeavours to seek the required consent to disclose the relevant rental information) and to the Valuer entering into a Non-Disclosure Agreement to keep those rental rates strictly confidential (and not be shared with the tenant or any other party) and to be used for the purpose only of determining the relevant rental; and
- If requested by the tenant, the Independent Valuer will share PoM's and the tenant's submissions with the other party's Valuer only (and not be shared with the tenant, PoM or any other party). In such case, PoM and the tenant will have a right to make further submissions to the Independent Valuer in response to the other party's submission.

The determination of the Reasonable Market Rent by the Independent Valuer will be binding on the parties, and the costs of the Independent Valuer will be shared equally between the parties.

⁷ Port Concession Deed, Clause 18.2(b)

4. Agreeing new leases

PoM issues new leases to tenants from time to time in the following circumstances:

- To existing tenants when their existing lease expires; or
- To prospective tenants for land that is not subject to an existing lease.

Offers of a new lease to an existing tenant or a prospective tenant will be on terms that include a rent review opportunity involving:

- The rent will not exceed a Reasonable Market Rent. For clarity, where the tenant and PoM agree that a New Lease contains provisions for a fixed rent increase only, a Reasonable Market Rent is the rent as agreed to apply from the commencement date only;
- A Market Rent Review on the 5th anniversary of the commencement date of the lease; and
- A right for the Reasonable Market Rent at lease commencement or at each market rent review date to be subject to Binding Determination.

A Market Rent Review, as referred to above, does not apply to any Post PLT Leases or New Leases (where such New Leases contain provisions for fixed rent increases only).

Sections 5 and 6 provide further details on agreeing new leases.

There are a number of exceptions that may apply to the above rent review opportunity. These exceptions generally apply where some other protection of the tenant and PoM's interests is in place, or a competitive tender process is undertaken.

The key circumstances where these rent review opportunity exceptions may apply include⁸:

- **Competitive tender** | new leases entered into following a Bona Fide Competitive Tender Process;
- **Port Lessor approval where consent is required under the Port Concession Deed** | where PoM and the tenant agree to terms that are different to the Port Concession Deed and PoM cannot enter into a lease on such terms without the consent of the Port Lessor;
- **Variations to existing leases on the same rent and rent review terms** | where PoM and a tenant agree to vary the terms of an existing lease on terms that provide a rent per square metre that is no greater than the rent in the existing lease and rent reviews are on the same terms as the existing lease.
Examples of amendments include an extension to the term of the existing lease or a variation to the premises (noting there can be no variation if the tenant and PoM do not agree);
- **Leases with options** | leases with options in favour of the tenant to renew the lease (i.e. to extend the term of their tenure) exercised under the terms of the lease;
- **Assignment** | assignment of a lease from an existing tenant to another person where the terms of the lease are not re-opened; or
- **Small leases** | new leases that have annual rental that is less than \$100,000 (increased by CPI each year from 30 June 2016) and for which the tenant and its associates do not, and do not seek to have, a lease of other port land.

For the further detail on these exceptions, see the extracts of the Port Concession Deed⁹ on PoM's website.

⁸ Port Concession Deed, Clause 18.1(a), (d) and (f)

⁹ Port Concession Deed, Clause 18.1(a), (d) and (f)

5. Agreeing new leases for existing tenants

5.1 When do new leases for existing tenants apply?

If an existing tenant wishes to remain in occupation of its premises after the expiration of its lease, and does not have an option to renew, the tenant can request a new lease from PoM.

The process in this charter for new leases for existing tenants does not apply in circumstances where PoM chooses to pursue a Bona Fide Competitive Tender Process for the leasing of land upon expiry of an existing lease for that land.

It is important to note that port land is a limited resource, and tenant requests to occupy a given site may not always be able to be accommodated within the long-term plans for the port. More information about our vision for the future development of the port can be found in the Port Development Strategy, available on our website [here](#).

If during any period of overholding an offer is made before the date that is 180 days after an existing tenant lease has expired, such tenant and PoM may agree to enter into a new lease, in respect to the same area of land and on substantially the same terms as to rent and reviews and escalation of rent as applied under the existing tenant lease, and the negotiation of such new lease will be an exception to the rent review opportunity in section 3 and sections 5.3 and 5.4 will not apply.

5.2 How are negotiations for new leases for existing tenants initiated?

Subject to the terms of the existing lease, negotiations for a new lease for an existing tenant may be initiated by:

- PoM notifying a tenant, no less than 18 months (30 months for a Coode Island Tenant) before its existing lease expires, of PoM's willingness to negotiate a new lease with the existing tenant without undertaking a Bona Fide Competitive Tender Process; or
- The tenant, no less than 18 months before its lease expires (30 months for a Coode Island Tenant), notifying PoM that it is seeking to remain in occupation of its premises beyond its current lease expiry and PoM confirming that it is willing to offer a new lease to the existing tenant and for this to be done outside of a Bona Fide Competitive Tender Process.

We will notify tenants no less than 18 months (30 months for a Coode Island Tenant) before lease expiry of our intention to offer new leases or not. In the event a new lease is offered to a tenant the tenant can choose to either let the lease lapse and make alternative arrangements or seek to negotiate terms of a new lease for the same premises (consistent with this charter).

In deciding whether to offer a new lease to an existing tenant, we may also undertake an expression of interest process to gauge interest from other parties in the site to ensure that port of Melbourne land is put to the best and most efficient use in the interests of Victorian consumers.

5.3 How are negotiations for new leases for existing tenants conducted?

If we offer a new lease, then we will provide the tenant with a detailed non-binding term sheet which includes Key Commercial Terms particular to the tenant and premises, together with a copy of PoM's Precedent Lease Agreement. Unless the tenant requests alternative terms, the terms offered will be consistent with PoM's obligations and processes in this charter.

PoM and the tenant will then negotiate and seek to reach agreement on the Key Commercial Terms as set out in the detailed non-binding term sheet. The tenant may, as part of the negotiations, request that additional key terms and bespoke drafting be included in the detailed term sheet (which also highlights any material departures from or additions to the Precedent Lease Agreement).

Once the detailed term sheet is signed by both parties, we will provide the tenant with the Draft Lease Agreement. The Draft Lease agreement will be based on PoM's Precedent Lease Agreement and is adapted to reflect the Key Commercial Terms. Depending on the complexity of the lease, we will aim to provide the Draft Lease Agreement within 28 days of both parties signing the term sheet.

If a tenant requests a Draft Lease Agreement be prepared prior to signing the term sheet, we will do so once the Key Commercial Terms are substantially progressed. We will then seek to finalise negotiations on the Key Commercial Terms and request that both parties sign the term sheet prior to the parties investing further resources in finalising the Draft Lease Agreement.

We will seek to work with the tenant to agree and execute a new lease in a timely manner – typically within 6 months of commencement of negotiations (i.e. at least 12 months prior to the existing lease expiry date). Note that this is an indicative timeframe only, and may need to be revised to align to the circumstances and/or characteristics of the site. This negotiation period may also be extended by agreement between the parties with new lease terms back dated if required.

5.4 How are negotiations escalated and resolved?

Negotiation of Key Commercial Terms

PoM and the tenant will engage in good faith negotiations on a without prejudice basis regarding the Key Commercial Terms contained in the detailed non-binding term sheet.

If agreement on a detailed non-binding term sheet for the new lease is not achieved within 6 months of commencement of negotiations, the tenant or PoM may request that a without prejudice CEO Meeting be organised between the CEO of PoM and a senior executive of the tenant to seek to negotiate an agreement on the Key Commercial Terms of the new lease. In addition, tenants may request the Port Lessor to attend as an independent observer at the CEO Meeting.

Independent determination of Reasonable Market Rent

If agreement is not reached on the Reasonable Market Rent at the conclusion of the CEO Meeting, then the tenant can request that the Reasonable Market Rent be determined by an Independent Valuer taking into account the Key Commercial Terms as contained in the detailed non-binding term sheet (which may include additional terms and bespoke drafting if requested by the tenant and which also highlights any material departures from or additions to the Precedent Lease Agreement) and the Precedent Lease Agreement.¹⁰


The Independent Valuer will be appointed using the process outlined in Appendix A and the Independent Valuer will determine what a Reasonable Market Rent is by applying the principles outlined in Appendix B, and following the process in section 3.4. The Reasonable Market Rent determined by the Independent Valuer will be binding on both PoM and the tenant for the purposes of inclusion in the detailed non-binding term sheet, noting that:

- the tenant is not obliged to sign the non-binding term sheet or enter into a new lease; and
- the parties will only be bound by the Reasonable Market Rent determined by the Independent Valuer where the Key Commercial Terms upon which the determination was assessed remain unchanged and the Precedent Lease Agreement provided to the Independent Valuer is materially the same as the Draft Lease Agreement.

Negotiation of lease terms

If a detailed non-binding term sheet is signed but agreement on the full terms of the new lease (other than the Key

¹⁰ Unless the exceptions outlined in section 4 apply



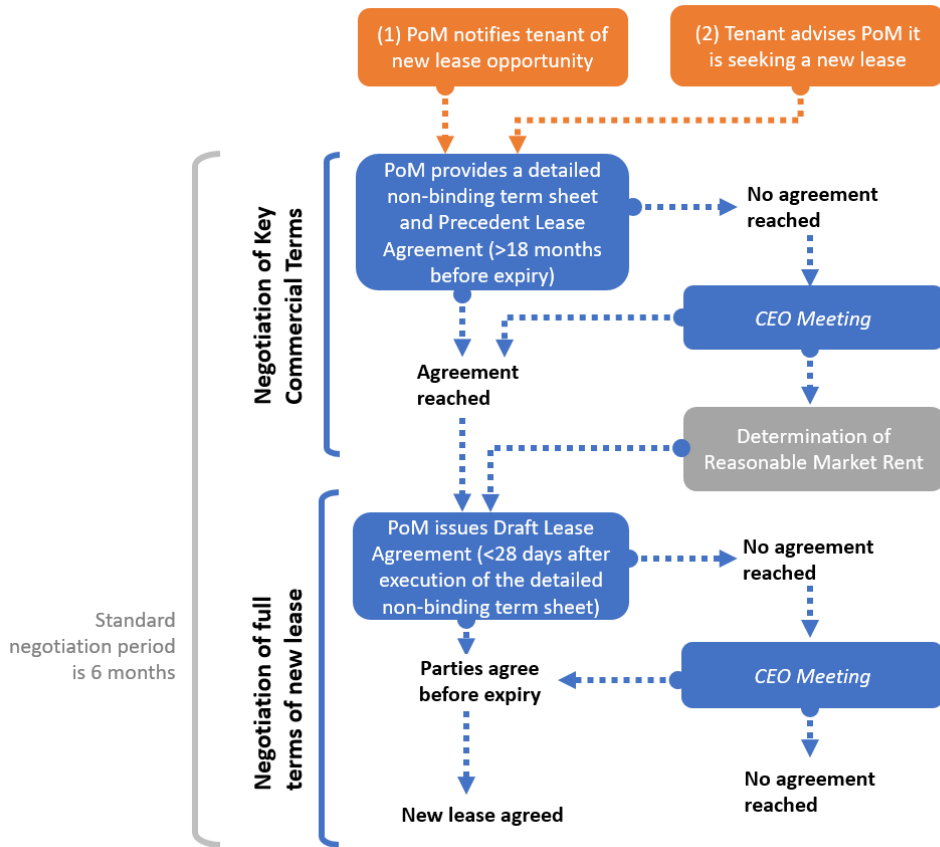
Commercial Terms and such other terms as the tenant may have requested to be included in the detailed non-binding term sheet and which also highlights any material departures from or additions to the Precedent Lease Agreement) is not achieved within 6 months of commencement of negotiations, the tenant or PoM may request that a CEO Meeting be organised between the CEO of PoM and a senior executive of the tenant to seek to negotiate an agreement on the new lease terms. In addition, tenants may request Port Lessor to attend as an independent observer at the CEO Meeting.

Neither the tenant or PoM is obliged to finalise a new lease. Where agreement cannot be reached on the new lease terms (other than the Reasonable Market Rent determined by the Independent Valuer) during the course of the six month negotiation period, in accordance with the terms of the existing lease, the current lease expiry date (and applicable lease conditions) will apply and the tenant may be required to vacate and leave the premises in a condition consistent with the terms of the existing lease. Alternatively, PoM and the tenant may agree to extend the negotiation period beyond the typical 6-month timeframe to enable a lease agreement to be finalised.

As noted above in section 4, not all requests for tenure at the port can be accommodated within the limited supply of land and obligations upon PoM to ensure that port land is put to the best and most efficient use in the interests of Victorian consumers.

PoM is committed to working with existing and prospective tenants to ensure that all reasonable requests that are consistent with the long-term plans for the port and in the interests of Victorian consumers can be accommodated.

Figure 3: Process and indicative timeframes for agreeing a new lease with the existing tenant of the premises



6. Establishing new leases for prospective tenants

6.1 When do new leases apply?

The following process for new leases applies where a prospective tenant seeks to enter into a lease with PoM for port land that is not subject to an existing lease with that tenant. The land involved may include vacant land or land subject to an expiring lease.

The process for new leases set out in this charter does not apply in circumstances where PoM chooses to pursue a Bona Fide Competitive Tender Process for the leasing of the land.

It is important to note that port land is a limited resource, and requests to occupy a given site may not always be able to be accommodated within the long-term plans for the Port. More information about our vision for the future development of the Port can be found in the Port Development Strategy, available on PoM's website [here](#).

6.2 How are new leases initiated?

New leases can be initiated by either PoM or prospective tenants via:

- a Bona Fide Competitive Tender Process;
- offers initiated by PoM to individual parties outside of a Bona Fide Competitive Tender Process; or
- unsolicited offers from prospective tenants, where both parties agree to enter into negotiations.¹¹

In deciding how to establish a new lease for a site, we may also undertake an expression of interest process to gauge interest in the site to ensure that port of Melbourne land is put to the best and most efficient use in the interests of Victorian consumers.

6.3 How are new lease terms established?

If we choose to offer a new lease other than by way of a Bona Fide Competitive Tender Process, the prospective tenant will be provided with a detailed non-binding term sheet that contains the proposed Key Commercial Terms consistent with the processes and obligations in this charter, together with a copy of PoM's Precedent Lease Agreement. The tenant may, as part of the negotiations, request that additional key terms and bespoke drafting be included in the detailed term sheet (which also highlights any material departures from or additions to the Precedent Lease Agreement).

PoM will negotiate in good faith on a without prejudice basis with the prospective tenant to seek agreement on these terms within two months of the detailed non-binding term sheet being issued.

Once the term sheet is signed by both parties, we will provide the prospective tenant with the Draft Lease Agreement. The Draft Lease Agreement will be based on PoM's Precedent Lease Agreement and is adapted to reflect the Key Commercial Terms. Depending on the complexity of the lease, we will aim to provide the Draft Lease Agreement within 28 days of both parties signing the term sheet.

¹¹ In the case of unsolicited offers it is likely that there will be a period of general inquiry before the parties begin lease negotiations. To acknowledge that both parties have agreed to enter into formal negotiations, the commencement of this process will be initiated by a formal exchange of letters.

If a prospective tenant requests a Draft Lease Agreement be prepared prior to signing the term sheet, we will do so once the Key Commercial Terms are substantially progressed. We will then seek to finalise negotiations on the Key Commercial Terms and request that both parties sign the term sheet prior to the parties investing further resources in finalising the Draft Lease Agreement.

We will use reasonable endeavours to settle the Draft Lease Agreement in order to meet the agreed commencement date of the new lease, however in some cases we may agree with the prospective tenant to extend the negotiation period.

For all new leases with durations longer than eight years, unless otherwise agreed between the parties (and with the approval of the Port Lessor), we will include a Market Rent Review mechanism in the new lease occurring on each 5-year anniversary of the commencing date.¹² This mechanism will reflect the Market Rent Review process explained in Section 3 of this charter.

6.4 How are negotiations escalated and resolved?

Negotiation of Key Commercial Terms

If agreement on the detailed non-binding term sheet is not achieved within two months of the non-binding term sheet being issued, the prospective tenant or PoM can request a without prejudice CEO Meeting between the CEO of PoM and a senior executive of the prospective tenant to seek agreement of the Key Commercial Terms. In addition, prospective tenants may request Port Lessor to attend as an independent observer at the CEO Meeting.

Independent determination of Reasonable Market Rent

If agreement is not reached at the CEO Meeting on the Reasonable Market Rent, then the prospective tenant can request that the Reasonable Market Rent be determined by an Independent Valuer having regard to the Key Commercial Terms as contained in the detailed non-binding term sheet (which may include additional key terms and bespoke drafting if requested by the tenant and which also highlights any material departures from or additions to the Precedent Lease Agreement) and the Precedent Lease Agreement.¹³

The Independent Valuer will be appointed using the process outlined in Appendix A and the Independent Valuer will determine what a Reasonable Market Rent is by applying the principles outlined in Appendix B and following the process in section 3.4. The Reasonable Market Rent determined by the Independent Valuer will be binding on both PoM and the prospective tenant for the purposes of inclusion in the detailed non-binding term sheet, noting that:

- the tenant is not obliged to sign the non-binding term sheet or enter into a new lease; and
- the parties will only be bound by the Reasonable Market Rent determined by the Independent Valuer where the Key Commercial Terms upon which the determination was assessed remain unchanged and the Precedent Lease Agreement provided to the Independent Valuer is materially the same as the Draft Lease Agreement.

Negotiation of lease terms

If a detailed non-binding term sheet is signed but agreement on the full terms of the new lease (other than the Key Commercial Terms) is not achieved within two months of the non-binding term sheet being issued, the prospective tenant or PoM may request that a CEO Meeting be organised between the CEO of PoM and a senior executive of the prospective tenant to seek to negotiate an agreement on the new lease terms. In addition, tenants may request Port Lessor to attend as an independent observer at the CEO Meeting.

Neither the prospective tenant or PoM is obliged to finalise a new lease where agreement cannot be reached on the new lease terms (other than the Reasonable Market Rent determined by the Independent Valuer). Accordingly, if agreement cannot be reached on the new lease, neither the prospective tenant or PoM is obliged to continue with negotiations.

¹² Port Concession Deed, Clause 18.1

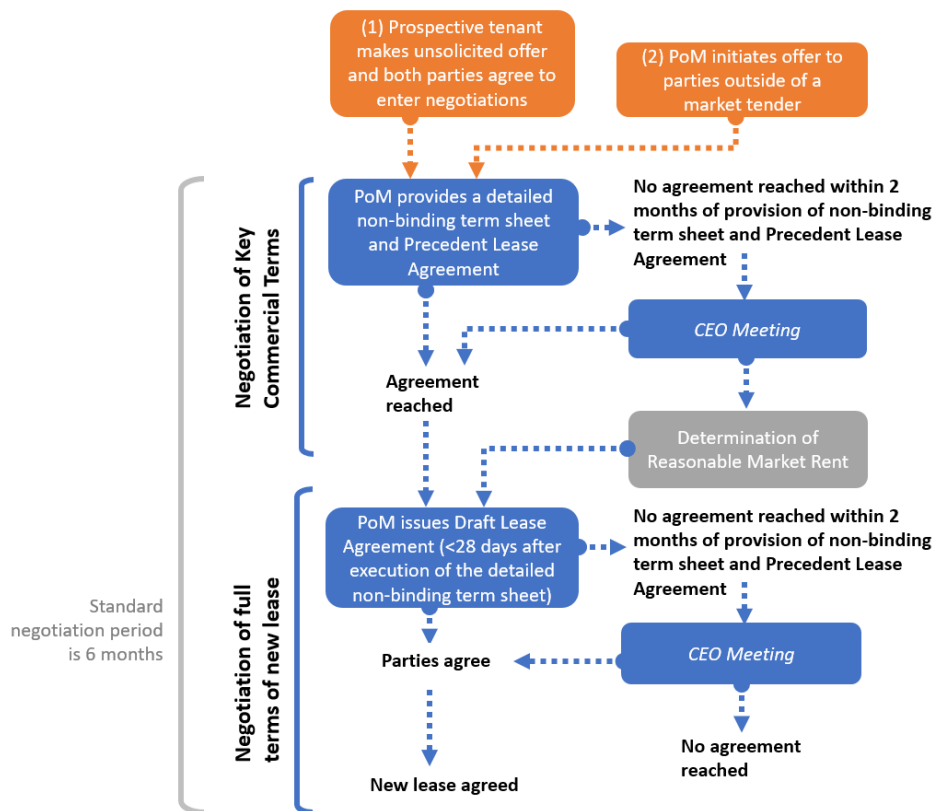
¹³ Unless the exceptions outlined in section 4 apply

PoM and the tenant may agree to extend the negotiation period beyond the typical 6-month timeframe to enable a lease agreement to be finalised.

As noted above, not all requests for tenure at the port can be accommodated within the limited supply of land and obligations upon PoM to ensure that port of Melbourne land is put to the best and most efficient use in the interests of Victorian consumers.

PoM is committed to working with existing and prospective tenants to ensure that all reasonable requests that are consistent with the long-term plans for the port and in the interests of Victorian consumers can be accommodated.

Figure 4: Process and indicative timeframes for agreeing new leases



7. Monitoring and reporting compliance with this charter

7.1 Compliance monitoring processes

We are committed to providing transparency about our performance against this charter through a voluntary compliance monitoring and disclosure regime. This involves:

- compliance oversight by the Port Lessor (representing the Victorian Government) for elements of this charter that are underpinned by PoM's obligations to the Victorian Government; and
- an overarching disclosure regime that applies to all elements of this charter.

This charter is also supported by a complaints process that provides for escalation by tenants or prospective tenants to the ESC in accordance with Appendix C.

To provide transparency on how we perform against our commitments under this charter, we have developed a compliance monitoring process that involves:

- documenting our performance and compliance with this charter;
- defining a role for the Port Lessor (as the representative of the Victorian Government) in monitoring compliance and in facilitating tenants to better understand their rights under this charter;
- existing tenants and prospective tenants can request the Port Lessor to attend as an observer at a Mediation Meeting in the case of a Market Rent Review or a CEO Meeting in the case of a new lease negotiation; and
- extensive reporting obligations to the Port Lessor (as the representative of the Victorian Government).

We are also committed to our obligations to provide information to, and comply with written notices from, the Port Lessor.

7.2 We will report on compliance to the Port Lessor

PoM must provide the Port Lessor¹⁴:

- copies of new leases entered into by PoM with port tenants as soon as practicable after they are entered into;
- copies of material amendments to leases agreed by PoM with port tenants as soon as practicable after amendments are made;
- at the written request of the Port Lessor, information in PoM's possession about the current rents applicable under existing leases of port land, including material data:
 - about rents applicable to tenants of port land and to tenants of comparable land and premises and about the value of the port land and that of comparable land and premises; or
 - that is otherwise relevant to determining the value of the port land.

¹⁴ Port Concession Deed, Clause 18.2(c)

If we do not offer a rent review opportunity to a new tenant as required under this charter, the Port Lessor may give us written notice requiring us to offer such an opportunity within 30 days after the date of the notice. We may dispute the notice if we consider that we have not failed to offer a rent review opportunity as required.¹⁵

If we fail to comply with a notice from the Port Lessor, then subject to any dispute processes agreed with the Port Lessor, the Port Lessor and its directors can on PoM's behalf¹⁶:

- offer the rent review opportunity; and
- execute any documents or instruments it reasonably considers to be needed to give effect to the offer of the rent review opportunity.

7.3 Complaints to PoM

We commit through this charter to a process for existing tenants and prospective tenants to make formal compliance enquiries or complaints to us about our compliance with this charter. These can be emailed to tenancycomplaints@portofmelbourne.com setting out the elements of this charter that the existing tenant or prospective tenant considers have not been complied with and the reasons for the enquiry or complaint. Existing tenants and prospective tenants may also make an enquiry about what constitutes compliance, where this is unclear or in dispute.

If a written reply is requested, we will acknowledge receipt within 5 Business Days and take no more than 10 Business Days to respond to an enquiry or complaint. Our response will address the substance of the enquiry or complaint or set out a date when a reply will be provided if the enquiry or complaint is complex.

7.4 Dispute Resolution by ESC

We also commit through this charter to a formal dispute resolution process by the ESC, acting as an independent expert, regarding compliance with the charter. Where an existing tenant or prospective tenant has followed the complaints process above and found our response to be unsatisfactory, it can initiate a dispute resolution process in accordance with Appendix C.

7.5 Bona Fide Competitive Tender Process minimum requirements and criteria satisfaction review

Prior to the commencement of a Bona Fide Competitive Tender Process, where the outcome of such process is intended to result in a lease for a term of more than 8 years, we will advise the ESC of our intention to undertake such process. We will provide the ESC with information showing that the terms of the tender meet each of the minimum requirements and criteria contained in the dot points at Appendix D of this charter (but in respect to the assessment criteria as contained in the tender, the ESC will only be confirming that such assessment criteria was included and not assessing matters of substance). For the avoidance of doubt, PoM may add additional criteria (which is not inconsistent with the requirements for a Bona Fide Competitive Tender Process) to the minimum requirements and criteria as listed in Appendix D.

The ESC will have 10 Business Days from receipt of the above information in order to provide a certificate confirming that the Bona Fide Competitive Tender Process is in accordance with the minimum requirements and criteria contained in the dot points at Appendix D of this charter. If the ESC does not respond within 10 Business Days, the ESC will be deemed to have provided such confirmation.

¹⁵ Port Concession Deed, Clause 18.3

¹⁶ Port Concession Deed, Clause 18.4

We will again report to the ESC prior to execution of agreement(s) arising from the Bona Fide Competitive Tender Process, such report which will identify the outcome of the process and how that meets the minimum requirements and criteria for a Bona Fide Competitive Tender Process as set out in the dot points at Appendix D.

The ESC will have 20 Business Days from receipt of the final report from PoM in order to provide a certificate confirming that the Bona Fide Competitive Tender Process has complied with the minimum requirements and criteria contained in the dot points at Appendix D of this charter (unless the tenderer opted out of the charter). If the ESC does not respond within 20 Business Days, the ESC will be deemed to have provided such confirmation.

For the avoidance of doubt, the ESC's confirmation role with respect to a Bona Fide Competitive Tender Process is limited to assessing compliance with the minimum requirements and criteria contained in the dot points at Appendix D of this charter. The ESC will not make any decisions or directions as to matters of substance arising out of or in connection with the Bona Fide Competitive Tender Process. The Bona Fide Competitive Tender Process is not subject to the dispute resolution as set out in Appendix C.

7.6 We will report annually on our performance

We will report annually on our website on how we have performed against key performance indicators (**KPIs**) that demonstrate compliance with, and performance against, this charter.

These KPIs will include information on the following:

- compliance with the notification timelines in this charter for Market Rent Reviews and lease expiries;
- number of Market Rent Reviews agreed or determined;
- number of Market Rent Reviews going to an Independent Valuer for determination;
- percentage of Market Rent Reviews finalised by the Market Rent Review date in the leases;
- number of new leases executed;
- number of new leases executed with existing tenants;
- percentage of new leases with existing tenants executed by the expiry date of the existing lease;
- number of new leases going to an Independent Valuer for determination of the Reasonable Market Rent;
- number of compliance enquiries and complaints received by PoM;
- number of compliance enquiries and complaints referred to the dispute resolution process; and
- number of Bona Fide Competitive Tender Process undertaken by PoM (including details of the sites the subject of such process), regardless of whether such process is captured by the materiality threshold as identified in section 7.5 of this charter.

We may add or remove KPIs from time to time to better reflect available information or better align with the purpose of this charter.

We will also publish current rental band information but, for confidentiality reasons, only to the extent that such rental band information will not identify any particular lease or breach PoM's confidentiality obligations under a lease. Accordingly, rental band information will only be published where there are at least three comparable leases on port land (having regard to the use of the premises and the relative commercial value of different precincts within the port). The rental band information will include information on the following:

- the different land use categories at the port and the range of rents that apply to each land use category;
- key attributes that differentiate land use categories and rents at the port, including (where applicable) key attributes that differentiate leases and rents within each land use category; and
- comparative information that PoM considers relevant to setting rent.

8. Further information

8.1 Useful links and supporting documents

The following supported materials are available on PoM's website:

Port Concession Deed clauses 18 and 19.

[Port Development Strategy](#)

8.2 Contact details

Port of Melbourne

Head of Property

Port of Melbourne

tenancycharter@portofmelbourne.com

Port Lessor

Brett McKenzie

General Manager

Melbourne Port Lessor Pty Ltd

brett.mckenzie@transport.vic.gov.au

8.3 Glossary

Term	Definition
Binding Determination	A binding determination of Reasonable Market Rent made by an Independent Valuer, appointed in accordance with the process set out in Appendix A and applying the valuation principles set out in Appendix B.
Bona Fide Competitive Tender Process	A process where prospective tenants for a particular lot or lots of land are invited (through an open advertised public process or invited on a closed invitee basis) to tender a proposal for lease under a formal process conducted in accordance with Appendix D in which case sections 5 and 6 of the Charter will not apply to the process.
Business Day	A day which is not a Saturday, Sunday or public holiday in Victoria.
CEO Meeting	A meeting between the CEO of PoM and a senior executive of the existing tenant or prospective tenant (with appropriate delegation) to seek to reach agreement on a Reasonable Market Rent or terms and conditions of a new lease.
Commencing Rent	The starting rent for a new lease. The Commencing Rent that we offer for leases will not exceed a Reasonable Market Rent.
Coode Island Tenant	A tenant of land within the Coode Island precinct used for storage of bulk volatile organic compounds.
Day	A reference to a day in this charter means a calendar day.
Draft Lease Agreement	A tailored version of the Precedent Lease Agreement incorporating Key Commercial Terms from a detailed non-binding term sheet.
Independent Valuer	A person nominated by the President of the Australian Property Institute to determine a Reasonable Market Rent, appointed in accordance with the process set out in Appendix A. The Independent Valuer must be: <ul style="list-style-type: none"> ▪ independent of PoM and the existing tenant or prospective tenant; ▪ suitably qualified, competent and appropriately experienced for the purpose of carrying out a rental valuation (such as a practising member of at least 10 years' standing of the Australian Property Institute (Victorian Division) who regularly values premises similar to the relevant premises); and ▪ covered by appropriate professional indemnity insurance.
Key Commercial Terms	Key commercial terms include the following: <ul style="list-style-type: none"> ▪ The area and location of the premises ▪ The term of the lease and any option periods ▪ The permitted use of the premises ▪ The commencing Reasonable Market Rent ▪ Any initial rent free periods or abatements ▪ The annual rental escalation ▪ The Market Rent Review process including the applicability of any ratchet mechanism ▪ The proposed outgoings clauses to be included in the lease including the amount of any management fee to apply ▪ Any proposed variations to the Precedent Lease Agreement
Market Rent Review	The process whereby, during the term of a lease, the rent under the lease is reviewed to ensure it reflects a Reasonable Market Rent.

Term	Definition
Mediation Meeting	A meeting between PoM, the tenant, and their respective Valuers to consult with the objective of achieving agreement on the Reasonable Market Rent.
New Lease	A lease which was negotiated and entered into after the date of this charter.
PoM	Port of Melbourne Group, including its operating company Port of Melbourne Operations Pty Ltd as trustee for the Port of Melbourne Unit Trust.
Port Concession Deed	The Port Concession Deed is an agreement between the Victorian Government, Port of Melbourne Corporation (the State-owned corporation that formerly owned and operated the port), Port Lessor and PoM. The Port Concession Deed sets out PoM's obligations regarding the provision of ongoing services during the term of the Port Lease in connection with the operation of the Port.
Port Lease	The 50-year lease of the port by the Victorian Government to Port of Melbourne Group (referred to as PoM in this charter).
Port Lessor	Melbourne Port Lessor Pty Ltd, a Victorian Government entity that is the owner of the port land and administers the Port Lease and Port Concession Deed on behalf of the Victorian Government.
Pre PLT Lease	A lease which was entered into prior to 31 October 2016 or substantially negotiated by PoMC prior to 31 October 2016 but entered into following that date, as may be varied from time to time.
Post PLT Lease	A lease which was negotiated and entered into after 31 October 2016 up to and including the date of this charter, as may be varied from time to time.
Precedent Lease Agreement	PoM's standard lease agreement which incorporates the standard terms and conditions required by PoM as a prudent port operator and as required under the Port Concession Deed and Port Lease, inclusive of an Explanatory Memorandum explaining key lease terms.
Previous Relevant Benchmark MRR	The Relevant Benchmark MRR that applied at the previous Market Rent Review date indexed annually at CPI. If there was no previous Market Rent Review date then the commencing rent indexed at CPI.
Reasonable Market Rent	Is as defined in Box 1, section 2.2 of this charter.
Relevant Benchmark MRR	The greater of the most recent Market Rent Review or the Previous Relevant Benchmark MRR.
Relevant Rental Band	<p>The Relevant Rental Band is prepared by a Valuer engaged by PoM, and represents the lowest and highest current rental rate per square metre applicable for leases at the port of Melbourne that are assessed by the Valuer to be comparable to the lease under negotiation having regard to:</p> <ul style="list-style-type: none"> ▪ The precinct in which the premises is located ▪ The permitted use of the site ▪ Utility of the site having regard to relevant matters, which may include such things as access to wharves, channel draft, rail, etc. <p>Note that the Relevant Rental Band may differ from the Reasonable Market Rent for the site in question. The Relevant Rental Band is based on existing rents at sites assessed by the Valuer to be comparable. Unlike Reasonable Market Rent, the Relevant Rental Band does not include adjustments to account for any differences in the matters identified in Box 1, section 2.2.</p> <p>For confidentiality reasons, a Relevant Rental Band will not be available where there are less than three comparable leases (not including the lease under negotiation) on port of Melbourne land.</p>
Rent Pause Mechanism	At a Market Rent Review date, if the current rent level is more than 4% above the determined market rent then the current rent level is maintained and the annual rent escalations under the lease will be suspended until such time that the Relevant Benchmark MRR (indexed at CPI) equals or exceeds the current rent level as determined

Term	Definition
	under the lease (as monitored and calculated by PoM at the annual escalation dates). At that point in time, the rent escalations (in accordance with the terms of the lease) will automatically resume until the next Market Rent Review date.
Rent Review Notice	A notice from PoM to a tenant, specifying PoM's assessment of the Reasonable Market Rent for the purpose of a Market Rent Review.
Valuer	An expert property valuer, being a person who is a practising member of at least 10 years' standing of the Australian Property Institute Incorporated (Victorian Division) and who regularly values premises similar to the land occupied by the tenant.
Valuer Report	A report prepared by a Valuer that details reasons for the Valuer's opinion of the Reasonable Market Rent and specifies the matters and evidence to which the Valuer had regard.

APPENDIX A – Process for the appointment of a determining Independent Valuer

As noted in this charter, where PoM and an existing tenant, or prospective tenant, are not able to agree on what constitutes Reasonable Market Rent, a determining Independent Valuer will be appointed.

The determining Independent Valuer must act as an expert and not as an arbitrator and the Independent Valuer's determination of the Reasonable Market Rent will be final and binding on the parties except in the case of manifest error.

The determining Independent Valuer's appointment, in accordance with this charter, will be made at the request of PoM to the President of the Australian Property Institute (**API President**).

PoM or the tenant (or prospective tenant) may reasonably object to an Independent Valuer nominated by the API President within 10 Business Days of nomination. Upon receipt of an objection the API President may at its discretion nominate another valuer as the determining Independent Valuer.

The fees of the determining Independent Valuer and the API President must be paid equally by PoM and the existing tenant or prospective tenant. PoM and the existing tenant, or prospective tenant, must pay the cost of their own appointed Valuer if required to assist with any submissions made to the determining Independent Valuer.

Either PoM or the existing tenant, or prospective tenant, can request the API President to appoint another Independent Valuer if the appointed Independent Valuer:

- (a) fails to accept the appointment;
- (b) resigns the appointment;
- (c) becomes incapacitated or dies; or
- (d) fails to make the determination within 60 days after accepting the appointment (or such further period as may be agreed by the parties in writing).

APPENDIX B – Valuation principles

A determining Independent Valuer must determine a Reasonable Market Rent, being the rent that would reasonably be expected to be realised if the premises was offered for lease in the open market by a willing but not anxious landlord to a willing but not anxious tenant and assuming the premises will be used for the permitted use, and having regard to:

- (a) the condition that the premises and any existing improvements are in at the time that the determination is made;
- (b) the location and area of the premises and the proximity to relevant facilities and transport links;
- (c) the cost of reclaiming or otherwise developing the premises (including constructing improvements) and the value of any other works to be performed or incentives offered by PoM;
- (d) the nature and utility of the permitted use;
- (e) the whole term of the lease, excluding options in favour of the tenant;
- (f) information that can reasonably be obtained about rents then applicable for tenants of the Port and tenants of other comparable land or premises outside of the Port and the value of the Port and that other comparable land or premises;
- (g) the comparability of leases and rents, having regard to the circumstances in which those leases and rents were determined, the relative commercial value and utility of different precincts within the port and the utility of operation within the different precincts;
- (h) any relevant information included in confidential submissions made by PoM or the tenant to the Independent Valuer;
- (i) the terms of any existing lease agreement to which the Reasonable Market Rent will be applied; and
- (j) in respect to a New Lease, the Key Commercial Terms included in any proposed detailed non-binding term sheet, such as, among other things, escalation rates, ratchet clauses and management fees (as well as any additional terms and bespoke drafting as may be requested by the tenant and which also highlights any material departures from or additions to the Precedent Lease Agreement) and a copy of the Precedent Lease Agreement.

APPENDIX C – Dispute Resolution Process

1.1. Dispute to be referred to parties' representatives

- (a) If a dispute is raised by an existing tenant or prospective tenant arising from or in connection with non-compliance by PoM with this charter (**Dispute**), the party (**Complainant**) may serve on PoM a notice entitled “Dispute Notice” (**Dispute Notice**) setting out:
 - (i) the nature of the Dispute in relation to this charter;
 - (ii) the outcome that the Complainant wants; and
 - (iii) what action the Complainant thinks will settle the Dispute.
- (b) Following receipt by PoM of the Dispute Notice, a representative of PoM and a representative of the Complainant must meet and try to resolve the Dispute. If within 10 Business Days after the Dispute Notice has been served on PoM, the Complainant and PoM either have not met to resolve the Dispute or have met but have not resolved the Dispute in writing, then the procedure in clause 1.2 will apply.

1.2. Appointment of Expert

- (a) If the relevant parties have not resolved the Dispute under clause 1.1, and the Complainant wishes to pursue the Dispute, the Complainant may refer the Dispute to the ESC (**Expert**) within 10 Business Days after the period for resolution of the Dispute under clause 1.1(b) ends.

1.3. Expert's powers and duties

- (a) Subject to clauses 1.3(b) and 1.3(c), the parties to the Dispute must instruct the Expert to:
 - (i) call for any information or make any investigation that the Expert considers appropriate;
 - (ii) allow each party an opportunity to make written submissions to the Expert;
 - (iii) place the weight on the information or findings of the investigation that the Expert sees fit;
 - (iv) act as an expert and not as an arbitrator;
 - (v) decide the Dispute by making a direction as to compliance with the charter in respect of timing and process matters (which includes the mechanics of the Rent Pause Mechanism) as relevant;
 - (vi) decide the Dispute within 30 Business Days (or such further period as may be agreed by the parties in writing) from the acceptance by the Expert of the appointment; and
 - (vii) advise the parties to the Dispute in writing of the decision and the Expert's reasons for that decision.
- (b) If a party to the Dispute refuses to participate in instructing the Expert in terms of clause 1.3(a) following not less than five Business Days' notice requiring it to do so given by another party (**Other Party**), the Other Party may alone instruct the Expert in terms of clause 1.3(a).
- (c) The parties acknowledge that the Expert's decision will be limited to whether the relevant processes (which includes the mechanics of the Rent Pause Mechanism) and timing (as applicable) as set out in the charter have been complied with. In the event that the Expert decides that there has been a non-compliance with any relevant process or timing element of the charter (as applicable), the Expert's order will be limited to a direction that the parties revisit the charter and apply the relevant terms of the charter. The Expert is not entitled to make orders in respect of non-process matters which are the subject of the dispute between the parties, such as the determination of a Reasonable Market Rent or the inclusion of specific terms and conditions.
- (d) The Expert may choose to appoint its own expert(s) for the purposes of the activity described in paragraphs (a) – (c) above.

1.4. Decision binding

The decision of the Expert is final and binding on all parties to the Dispute, such that a party will not challenge a decision of the Expert except on grounds of:

- (a) non-compliance with clause 1.3;
- (b) mistake of fact or mistake of law in reaching a decision; or
- (c) fraud or misrepresentation.

1.5. Costs of Expert

Unless otherwise decided by the Expert, the parties to the Dispute must bear their own costs, and pay any costs of the Expert equally.

APPENDIX D – Bona Fide Competitive Tender Process

Where PoM is conducting a Bona Fide Competitive Tender Process, such process must be subject to the following minimum requirements and criteria:

- A request for proposal (**RFP**) which:
 - (a) is issued to two or more parties in either a closed invitee or open advertised public process;
 - (b) contains a commencement date and closure date for the RFP; and
 - (c) contains the Key Commercial Terms required by PoM to be tendered on (such terms which must comply with the charter);
- Proponents being afforded the opportunity to submit an offer which is in accordance with the charter or otherwise;
- Assessment criteria to be used by PoM in reviewing offers including such things as:
 - (a) Key Commercial Terms or variations thereof (including rent);
 - (b) Variations to the Precedent Lease Agreement;
 - (c) Strategic considerations;
 - (d) Proposed investments and operational arrangements of the proponent; and
 - (e) Financial covenant; and
- A best and final offer process to finalise preferred proponent, (which preferred proponent's offer, at its discretion, may or may not comply with the charter).

The above minimum requirements and criteria do not prevent a proponent from submitting an offer which contains Key Commercial Terms which are not consistent with the rent escalation and rent review provisions of the charter. A proponent may, by written notice to PoM, opt out of the provisions of the rent escalation and rent review provisions of the charter in which case PoM's dealings with the proponent in that regard need not comply with the charter.

Following selection of the preferred proponent, a negotiation process may be required to finalise lease terms acceptable to both parties.

PoM is not obliged to accept any proposal and may terminate the process at any time and at its absolute discretion.

PoM will maintain records of the Bona Fide Competitive Tender Process and make such records available for inspection by the Port Lessor.

For the avoidance of doubt, an expression of interest process on its own is not a Bona Fide Competitive Tender Process as referred to in this Appendix D.

Port of Melbourne Operations Pty Ltd
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Port of Melbourne

