



SUMMARY OF THE DRAFT LEASING POLICY AMENDMENTS

Introduction

The Sydney Harbour Federation Trust (the “Harbour Trust”) was established under section 5 of the *Sydney Harbour Federation Trust Act 2001* (“Act”), to protect, manage and care for some of Sydney Harbour’s most spectacular and diverse foreshore sites including Cockatoo Island, Headland Park (Mosman), Macquarie Lightstation (Vaucluse), North Head Sanctuary (Manly) and Sub Base Platypus (North Sydney).

In order for the Harbour Trust to operate and deliver the objectives and priorities, as set out in the *Act*, the Comprehensive Plan and a suite of Management Plans; the Harbour Trust generates income through leasing and licensing (collectively defined as ‘Leasing’) of Premises, facilities and land (collectively defined as ‘Premises’), by a publicly transparent and competitive leasing process, outlined in the Leasing Policy 2017 (“LP 2017”).

Since the inception of LP 2017, there has been revisions to the *Act*, an independent review conducted and feedback received from public consultation. For the Leasing Policy to reflect the revisions and recommendations, the Harbour Trust proposes to replace LP 2017 with a revised Draft Leasing Policy 2022 and Draft Leasing Protocols 2022 (collectively defined as “DLP 2022”).

Background

LP 2017 was established to set out principles and processes for the leasing of buildings, facilities and land on Trust sites and was approved by the Members of the Trust in 2017.

In early 2020, the Harbour Trust undertook a review of LP 2017 and released the Draft Leasing Policy 2020 (“DLP 2020”) for public consultation, intending at that time to replace the existing.

DLP 2020 did not proceed past public consultation, as in June of that year, an Independent Review of the Harbour Trust was completed (“Independent Review”). The Independent Review published twenty-one recommendations, of which four (11, 12, 13 and 19(a)) related to changes to the leasing policy.

The Independent Review also contained recommendations for changes to the *Act*. Following on from the publishing of the Independent Review, the *Sydney Harbour Federation Trust Amendment Bill 2021* (“the Bill”) was passed, and the *Act* was soon after updated.

A summary of the Independent Review Recommendations, legislative amendments and public consultation feedback is detailed in Appendix A.

Draft Leasing Policy Changes

The Harbour Trust has reviewed LP 2017 against the revised *Act*, the Independent Review recommendations and feedback received from the public consultation of DLP 2020.

In order for the Leasing Policy to reflect the updates and remain fit for purpose, the Harbour Trust proposes to update LP 2017 with DLP 2022. Structurally there are a few differences to note between LP 2017 and DLP 2022, the most prominent of which being the fact that all process related components have been annexed into a separate document we define as the “protocols”. Both the draft leasing policy and draft protocols are inextricably linked. The aim of the protocols document is to make it easier to understand the policy components as separate from the process components.

The Harbour Trust notes the amendments drafted, are consistent with legislative requirements and introduced to improve clarity, transparency and the overall streamlining of the policies and protocols.

Further updates that can be seen in DLP 2022 include:

1. Introduction

The Harbour Trust has inserted an introductory paragraph to briefly outline the Harbour Trust and the Leasing Policy purpose.

2. Terminology

- a. The word “Buildings” which encapsulates property, facilities and land has been replaced with “Premises” to align with leasing documentation.
- b. The “Board” has been replaced with “Members of the Trust”, to align with legislation.

3. Leases and Licenses

Leasing of Premises, facilities and land as defined in the Leasing Policy now includes licensing.

4. Conflict of Interest, Confidentiality and Security

Policies around conflict of interest (Leasing Policy 2022 section 2.3), confidentiality (Leasing Policy 2022 section 2.4) and security (Leasing Policy 2022 section 2.3) have been drafted and included to ensure transparency and accountability.

5. Rental Subsidy

The Rental Subsidy Policy has now been included into the DLP 2022 for transparency and alignment of process.

6. Leasing Protocols

The Harbour Trust has drafted and introduced Leasing Protocols as a separate document. Draft Leasing Protocols 2022 aligns with the Leasing Policy 2022 and outlines the process in full which assists in furthering transparency of the leasing process for public interest and accountability.

7. First-time Leasing Opportunities

The First-Time Leasing definition (Leasing Policy 2022 section 5.1.1) has been amended to include “Premises which are vacant and have not been offered to the market for a period in excess of ten years”. This change has been included to meet Harbour Trust objectives and probity.

8. Competitive Applications

The Competitive Application Process elements have been omitted and transferred from the LP 2017 to Draft Leasing Protocols 2022 to improve clarity and purpose. The Competitive Application section has also been updated to reflect legislative changes for a Lease period more than 25 years, but not longer than 35 years.

9. Subsequent Leasing Opportunity

- a. The process elements have been omitted and transferred from the LP 2017 to Draft Leasing Protocols 2022 to improve clarity and purpose.
- b. The “exception to Leasing Procedure” (section 7.1 of LP 2017) has been removed, redrafted and included within Leasing Policy 2022 (section 5.10 “Unsolicited Proposals”).
- c. To improve clarity and purpose, the process elements outlined in availability listings were transferred from LP 2017 to Draft Leasing Protocols 2022.
- d. The Availability Listing information requirements will now also include whether the Premises is subject to the Trust’s Rental Subsidy Policy (Leasing Policy 2022 section 5.2.3(d)).
- e. Leasing Policy 2022 sections 5.2.7 and 5.2.8 have been included to outline the requirements of the Harbour Trust, when entering into Subsequent Leasing Competitive Applications.

10. Open Leasing

- a. Leasing Policy 2022 Section 5.2.6 has been included for clarity, to offer an example of when a Subsequent Leasing Opportunity may be handled via the Open Leasing Process, as opposed to the Competitive Application Process.
- b. Leasing Policy 2022 Section 5.2.11 has been introduced to outline the assessment requirements for Open Leasing applications.

11. Lease Renewals

- a. The Lease Renewal definition (Leasing Policy 2022 section 5.3.1) now includes the words “subject to the exercise of any option right under the lease”, to align with legislative requirements and to ensure lease options are accounted for within the original lease term.
- b. The Renewal Request period has been extended from 12 months to 24 months (Leasing Policy 2022 section 5.3.3). The extension of time will assist Tenants with their continuity plans.
- c. Lease Renewal Considerations now include additional criteria (Leasing Policy 2022 section 5.3.4 (J)), which specifies any negotiation must lead to best value along with meeting the Harbour Trust’s probity assessment. This addition has been introduced to ensure transparency and accountability of all Harbour Trust practices.
- d. The sentence regarding qualifying of applications has been omitted from LP 2017 to avoid duplication.
- e. The length of time whereby the Harbour Trust will consider applications for new or extended leases, has been extended from 12 months to 24 months to assist with continuity plans (Leasing Policy 2022 section 5.3.5).
- f. Additional Provisions have also been included for renewals involving Long-Term Tenants (Leasing Policy 2022 sections 5.3.7 and 5.3.8) to satisfy legislative requirements.

12. Subleasing

The Harbour Trust has introduced Leasing Policy 2022 section 5.4, which contains provisions around subleasing. These provisions have been included for clarity and in response to the Independent Review recommendation 11.

13. Approval Of Leases Involving High Risk Arrangements

The “High risk arrangement” criteria have been amended to include leases of more than 25 years, and not longer than 35 years in accordance with revised legislative requirements (Leasing Policy 2022 section 5.5.2(d)).

The process elements have been omitted and transferred from LP 2017 to Draft Leasing Protocols 2022 to improve clarity and purpose.

Leases over \$1m (LP 2017 section 10.2) and Term Thresholds (LP 2017 section 10.3) have been omitted as no longer in line with the *Act*.

14. Leases Longer Than 25 Years, but not Longer Than 35 Years

The Harbour Trust has introduced section 5.6 within the Leasing Policy 2022 and section 6 within the Draft Leasing Protocols 2022, which contain policy and process around leases longer than 25 years, and not longer than 35 years to align with the revised *Act*.

15. Leases Longer Than 35 Years

The Harbour Trust has introduced section 5.7 within the Leasing Policy 2022 and section 7 within the Leasing Protocols 2022, to make it clear that leases longer than 35 years are not permitted, under the revised *Act*.

16. External Approvals Required For Long Term And High Value Leases

The Harbour Trust has introduced Leasing Policy 2022 section 5.8 to address external approvals for long term and high value leases in accordance with revised legislative requirements. The processes around approvals of long term and high value leases, including the revised threshold of \$5 million have been outlined further in section 8 of the Leasing Protocols 2022.

17. Unsolicited Proposals

The Harbour Trust has introduced Leasing Policy 2022 section 5.10 to outline the eligibility criteria, policy and process around unsolicited proposals.

18. Short Term Leases

An additional provision has been added (Leasing Policy 2022 section 5.9.2) to allow the Harbour Trust's Executive Director to approve meanwhile uses (3 years or less in duration), to allow for utilisation of vacant premises during a period until they are bought back into leasable stock.

In addition to above, the Harbour Trust has made a number of general amendments to improve readability and consistency which include:

- The inclusion of a numbering system to aid in referencing;
- General amendments to wording for clarity and consistency of terminology;
- General amendments to grammar which eases readability, legibility and transparency; and
- Transfer of process provisions from the Leasing Policy to the Protocols Policy, to streamline and reinforce each policy's purpose.

