



SYDNEY HARBOUR FEDERATION TRUST LEASING POLICY

POLICY 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).

The Harbour Trust's mission is to bring to life our natural and cultural heritage and provide a lasting legacy for all Australians through conservation, remediation and the adaptive reuse of places entrusted to the Harbour Trust.

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, as detailed in the following policy, which replaces the Harbour Trust's former Leasing Policy approved by the Members of the Trust on 23 June 2017.

This Policy does not apply to the Leasing of the Harbour Trust's residential portfolio.

Leases can only be granted for activities in accordance with the requirements of the Harbour Trust's Comprehensive Plan made under the *Act*.

In addition, each site has a detailed Management Plan that prescribes desired outcomes for specific Premises, including suitable uses and how each site's heritage values are proposed to be interpreted.

When granting and managing Leases of Premises, the Harbour Trust will be guided by the Tenant Selection Committee ('TSC') and their relevant principles, criteria and guidelines that reflect legislative requirements.

The following Harbour Trust Policies and Protocols are relevant to this Policy:-

- Harbour Trust Rental Subsidy Policy for Contributory and Delivery Partners (*'Rental Subsidy Policy'*), as detailed in section 3; and
- *Leasing Protocols* as detailed in section 4.

1. LEASING OBJECTIVES

1.1. The key objectives of the Harbour Trust in the Leasing of Premises are:

- a) To establish tenancies to assist in preserving and/or enhancing the natural, historic, scenic, cultural and recreational resources of the Lands;
- b) To adaptively re-use Premises to contribute to a mutually supportive mix of uses for the Lands;
- c) To provide recreational, cultural, community and educational opportunities on the Lands for public enjoyment;
- d) To promote public visitation to the Lands by domestic and/or international visitors; and
- e) To generate a sustainable and diverse income stream to underpin the financial viability of the Harbour Trust and contribute to the cost of preserving, enhancing and managing the Lands.

2. TENANT SELECTION COMMITTEE

2.1. Tenant Selection Committee Composition and Convention

- 2.1.1. The Tenant Selection Committee ('TSC') is responsible for the approval of tenants and Lease terms. Where dictated by the value and term thresholds detailed in this Policy, the TSC will recommend tenants for approval by the Members of the Trust and the Minister as required.
- 2.1.2. The TSC will have a minimum of 5 Members. The TSC Chair will be appointed by the Members of the Trust. The TSC Members will include a Chair, the Executive Director, the Director responsible for Finance and the Director responsible for Property and Leasing. Other TSC Members may be appointed by the TSC at its discretion.
- 2.1.3. In case the Chair of the TSC is on leave or unable to exercise their powers for any cause, the Harbour Trust Executive Director has the immediate power to act on behalf of the Chair of the TSC until their return.
- 2.1.4. The TSC may seek specialist advice to assist in its functions where it deems it appropriate.
- 2.1.5. A majority of the members of the TSC shall constitute a quorum. A two-thirds majority is needed for the vote to pass. However, if the vote fails, the vote can be reconsidered at the sitting of the TSC.

2.2. Tenant Selection Evaluation Criteria

2.2.1. The following Tenant Selection Evaluation Criteria will apply to each Leasing application, including those subject to the *Rental Subsidy Policy*:

- a) **Planned use:** the consistency of the application/proposal with the objectives and outcomes in the Harbour Trust's adopted Plans, and the compatibility of the use with the nature and location of the Premises and other existing or planned uses for the Premises.
- b) **Economic benefit:** the competitiveness and economic value of the rental return and any capital improvements to the Premises (beyond the life of the Lease) offered by the prospective tenant. Economic benefit will take into account any direct or indirect cost or revenue implications for the Harbour Trust arising from the application/proposal.
- c) **Creative response to Leasing constraints:** how the prospective tenant proposes to address any Leasing constraints (such as public access, services infrastructure, transport, noise, lighting etc) in a way that is of long-term benefit to the Premises.
- d) **Sensitivity to heritage and environmental issues:** how the prospective tenant proposes to respect or enhance the heritage and environmental values of the Premises, especially where modifications to the Premises are proposed.
- e) **Financial soundness:** the prospective tenant's financial standing and a demonstrated capacity to meet its capital and Lease obligations for the duration of the proposed Lease term, taking into account its other financial commitments.
- f) **Experience and viability:** the strength of the prospective tenant's credentials and track record, together with a sustainable and viable business plan in the proposed use.

2.2.2. Prior to accepting applications, the TSC may, at its discretion, weight the criteria, apply a minimum threshold to one or more criteria and/or apply additional criteria according to the particular nature of the Premises or Leasing opportunity.

2.2.3. Any additional criteria determined by the TSC will be publicised by the Harbour Trust when offering the Leasing opportunity to the market. Weightings will not be publicised.

2.3. Conflict of Interest

All TSC Members and other Harbour Trust Officers participating in assessing Leasing applications or proposal (collectively referred to as 'Evaluators') are required to review the Harbour Trust's Code of Conduct and Fraud Policy which require Evaluators to act impartially and ethically before commencing any evaluation process.

Prior to or at any time during the evaluation of the Leasing application or proposal, Evaluators must declare any actual or potential conflict of interest they may have in relation to any applications or proposal received, to their relevant supervisor. Such declarations, including nil returns, must be recorded in writing and should be updated and signed off at every meeting of the TSC by the meetings appointed secretary. Unless they declare an interest themselves, the Chair of

the TSC may decide whether any such declared interest is material and may take any action deemed necessary to ensure that such interest does not influence the outcome of the application evaluation process. Any interests declared by the Chair of the TSC should be referred to the Harbour Trust Executive Director who may nominate himself/herself to act as Chair of the TSC in relation to the matter.

2.4. Confidentiality

- 2.4.1. Applications and proposals must be treated as confidential and information concerning
- 2.4.2. the evaluation of applications and proposals (including the identity of evaluators and the progress of the evaluation) should be treated as confidential.
- 2.4.3. No discussion regarding any aspect of the evaluation process must occur with any person outside of the TSC, the Executive Director, the Chair of the Members of the Trust, Evaluators or any officers or advisers engaged to assist with the evaluation, without the approval of the TSC Chair.

2.5. Security

All material related to any application or proposal, including its evaluation, must be kept secure so that it is not available to persons not involved in the evaluation and is only available on a 'need to know' basis.

3. RENTAL SUBSIDY POLICY FOR CONTRIBUTORY AND DELIVERY PARTNERS

- 3.1. The Harbour Trust may from time to time, grant a rental subsidy to a tenant or licensee, if found to be contributing to the Harbour Trusts objectives and priorities; such as a not-for-profit making a valuable and direct contribution, well beyond the contribution normally expected of other Tenants of its Premises.
- 3.2. The *Rental Subsidy Policy*, available via the Harbour Trust's website, sets out the Principles underpinning the equitable and transparent basis for the application of rental subsidies by Tenants and Licensees (identified as Delivery Partners), for the TSC to assess eligibility.
- 3.3. These Principles operate subject to the operational needs of the Harbour Trust. They do not give rise to any entitlement to a subsidy. All subsidies are granted in the absolute discretion of the Harbour Trust.

4. LEASING PROTOCOLS

- 4.1. The Leasing Protocols is a separate document that sets out the processes to be followed by Evaluators when assessing Lease applications and proposals. It outlines the legislative requirements and Harbour Trust processes to be addressed in considering Leases, and the

steps to follow if a decision by the TSC is made to proceed with a Lease application. The Leasing Protocols apply to the Leasing Categories (section 5).

5. LEASING CATEGORIES

5.1. First Time Leasing Opportunities

What is a First Time Leasing Opportunity?

- 5.1.1. A First Time Leasing Opportunity is defined as Leasing of Premises that have never been made available for Lease by the Harbour Trust before or Premises that is vacant and not been offered to the market for a period in excess of ten years.
- 5.1.2. The Harbour Trust must offer First Time Leasing Opportunities to the market via a publicly contestable process, known as the Competitive Application Process, to provide the opportunity for all interested parties to make an application to Lease the Premises.
- 5.1.3. The Harbour Trust will not enter into an Open Leasing process (*subsection 5.2.8*) with prospective tenants for First Time Leasing Opportunities until after completion of the Competitive Application Process, and only if no application is accepted.

Competitive Application

- 5.1.4. The Competitive Application Process may apply to a single Building or multiple Premises.
- 5.1.5. All Competitive Applications will be assessed in accordance with the Tenant Selection Evaluation Criteria (*subsection 2.2*) and the Leasing Protocols applicable at the time.
- 5.1.6. The Competitive Application Process involves the Harbour Trust advertising for prospective tenants to submit a response to a Call for Expressions of Interest in Premises. In some instances, the Harbour Trust may carry out a two-stage Competitive Application Process. This procedure will involve an initial Call for Expressions of Interest and then further submissions via a Request for Proposals, for shortlisted applicants. Shortlisted applicants are identified via screening assessment in accordance with the Tenant Selection Evaluation Criteria.
- 5.1.7. The Harbour Trust may stipulate additional Tenant Selection Evaluation Criteria. If there are additional Tenant Selection Evaluation Criteria, these must be detailed in the Call for Expression of Interest or the Request for Proposal.

Information requirements for the Competitive Application

- 5.1.8. The Competitive Application Process will contain:
 - a) Description, plans and specifications of the Premises to be Leased;
 - b) Information about the Premises location;
 - c) The applicable conditions of the application;

- d) Where relevant, information on the Harbour Trust's adopted Plans for the Premises;
- e) A pro forma guide setting out the information required in the Competitive Application;
- f) Whether the Building is subject to the *Rental Subsidy Policy*;
- g) Details of how, where and when to submit a Competitive Application; and
- h) The Tenant Selection Evaluation Criteria, including any additional criteria determined by the Harbour Trust.

5.1.9. The Competitive Application Process may also contain:

- a) A preferred range of uses for the Premises;
- b) The minimum terms of the Lease;
- c) The Harbour Trust's standard Lease memorandum;
- d) Heritage, environmental or design guidelines;
- e) Information on the Planning Application process; and
- f) Any other information deemed appropriate by the Harbour Trust.
- g) If the Lease is more than 25 years, and not longer than 35 years, an additional approval process (*subsection 5.6*).

5.1.10. At any stage during the process, the Harbour Trust may decide not to continue.

5.2. Subsequent Leasing Opportunities

What is a Subsequent Leasing Opportunity

5.2.1. A Subsequent Leasing Opportunity is defined as:

- a) Premises that have gone through a Competitive Application Process and no application has been accepted; or
- b) Previously Leased Premises which are vacated, or due to be vacated, on the expiry or termination of a Lease entered into with the Harbour Trust, and in accordance with *subsection 5.1.1*, the use of the Premises has been previously offered to the market

Availability Listing

5.2.2. Premises available as Subsequent Leasing Opportunities may be placed on the Harbour Trust's website as an Availability Listing and/or promoted through other mediums. There are no minimum advertising requirements for the Open Leasing Process (*subsection 5.2.8*) and the Harbour Trust may directly approach potential tenants and consider all enquiries for Open Leasing opportunities.

Information requirements for Subsequent Leasing Opportunities

5.2.3. Information requirements for Subsequent Leasing Opportunities on the Harbour Trust's website will include:

- a) Description, plans and specifications of the Premises to be Leased;
- b) Information about the Premises location
- c) The Open Leasing Conditions for the Application;
- d) Whether the Building is subject to the *Rental Subsidy Policy*; and
- e) Details of how to find out more information or on how to submit an application.

5.2.4. This may also include:

- a) The range of uses permitted for the Building;
- b) The minimum terms of the Lease;
- c) Information on the Harbour Trust's adopted Plans for the Premises;
- d) Heritage, environmental or design guidelines;
- e) Information on the Planning Application process; and/or
- f) Any other information deemed appropriate by the Harbour Trust.

Management of Subsequent Leasing Opportunity Applications

5.2.5. Subsequent Leasing Opportunities must be handled in one of two ways:-

- a) via a new Competitive Application Process (*subsection 5.2.6*); or
- b) via the Open Leasing Process (*subsection 5.2.8*).

5.2.6. Generally, the Subsequent Leasing approach is via a new Competitive Application Process, however from time to time and in order to deliver the Harbour Trust's objectives and priorities, the Harbour Trust may handle via the Open Leasing Process, which may for example, be chosen to maintain and build a long term thriving community, such as an art precinct.

Subsequent Leasing – Competitive Application

5.2.7. The Harbour Trust may call for applications for Subsequent Leasing Opportunities at any time, in which event the provisions relating to the Competitive Application Process (*subsection 5.14-5.1.10*) shall apply.

5.2.8. If the Harbour Trust instigates a Competitive Application Process in relation to a Subsequent Leasing Opportunity, it will not consider any other applications or proposals in relation to the relevant Building until conclusion of the Competitive Application Process and only if no application is accepted.

Open Leasing

- 5.2.9. The Open Leasing Process involves the Harbour Trust entering into direct Lease negotiations with any party applying for a Lease of a Building or Premises. The negotiation process can be initiated by the Harbour Trust or by applicants.
- 5.2.10. Negotiations of all such applications must be in accordance with the instructions and guidance of the Harbour Trust.
- 5.2.11. All applications for Subsequent Leasing Opportunities must be assessed against the Tenant Selection Evaluation Criteria (*subsection 2.2*) and the Leasing Protocols applicable at the time. The fact that an application has been received and is being considered does not prevent the Harbour Trust initiating or considering competing applications or initiating a Competitive Application Process in relation to the Subsequent Leasing Opportunity.

5.3. Lease Renewals

- 5.3.1. Premises where Leases are due to expire, subject to the exercise of any option right under the Lease, are classified as Subsequent Leasing Opportunities and the provisions of *subsection 5.2* apply.
- 5.3.2. Existing tenants may apply for a new Lease under the Competitive Application Process or Open Leasing Process, whichever is applicable.

Renewal Request

- 5.3.3. Existing tenants may exceptionally apply to extend or renew a Lease within the last 24 months of their Lease. The Harbour Trust is under no obligation to offer a new Lease or Lease extension, and the tenant is always obliged to provide vacant possession on Lease expiry.

Lease Renewal Considerations

- 5.3.4. Direct negotiations with an existing tenant to extend or renew a Lease on terms acceptable to the Harbour Trust will only be considered where:
- a) The application sufficiently meets the Tenant Selection Evaluation Criteria (*subsection 2.2*);
 - b) The tenant is not proposing any significant variation to the terms of the Lease, such as a change of use or control.
 - c) The tenant has performed, and continues to perform, its obligations under the existing Lease terms.
 - d) The resources involved in managing the Lease and tenant relationship have been, and are anticipated to remain, acceptable to the Harbour Trust;
 - e) The tenant can demonstrate a strong track record in the permitted use and the service/product offered by the tenant is of a high standard;
 - f) There has been no material diminution (or anticipated diminution) in the tenant's financial standing and the tenant can demonstrate its financial capacity and viability;

- g) The tenant's activities continue to be consistent with the Harbour Trust's objectives, plans, and heritage and environmental requirements;
- h) A new or extended Lease would not interrupt the Harbour Trust's planned maintenance program for the Premises; and
- i) Entering into a new or extended Lease would fulfil any other requirement deemed appropriate by the Harbour Trust.
- j) It can be clearly justified that the negotiation leads to best value and demonstrates that the process will meet the Harbour Trust's probity assessment.

Additional Provisions for Early Lease renewals

5.3.5. The Harbour Trust will not consider applications for new or extended Leases before the last 24 months of the existing Lease unless very significant benefits accrue to the Harbour Trust in achieving its objectives and the outcomes of its Plans by offering a Lease extension or renewal. Examples of such benefits include where the tenant's activities make a substantial contribution to visitor experience which could not be replicated by another tenant or use, or where a tenant proposes significant and enduring capital investment in the Premises.

5.3.6. The proposed restructure or sale of a tenant's business is not a qualifying circumstance.

Additional Provisions for renewals of long-term tenants

5.3.7. If renewal of a Lease results in a tenancy with a cumulative term of longer than 25 years, the Harbour Trust will call for applications for Subsequent Leasing Opportunities via the Competitive Application Process, in which event the provisions in *subsection 5.1.4 - 5.1.10* shall apply.

5.3.8. The existing long-term tenant will be able to submit a proposal via the Competitive Application Process for a consecutive Lease.

Approval of Lease Renewals

5.3.9. Following evaluation of the application, the representative of the Harbour Trust's Executive Team responsible for property Leasing will make a written recommendation to the TSC for further consideration or approval of a Lease renewal or extension, subject to the approval thresholds in *subsection 5.5*.

5.4. Subleasing of Harbour Trust Premises

5.4.1. Subleasing of Harbour Trust Premises will in all circumstances be subject to the consent of the TSC and such consent would generally only be provided if:

- a) the lessee's business is of a nature that would require subleasing arrangements to be entered into; and

- b) the sublessee's use of the premises is consistent with the permitted use under the Lease.

5.5. Approval of Leases involving high risk arrangements

- 5.5.1. The approval of the Members of the Trust is required for all 'high risk arrangements' entered into by the Harbour Trust.
- 5.5.2. The TSC will determine whether a Lease application is a 'high risk arrangement' by reference to the following criteria:
- 5.5.3. The Lease has a rental value in excess of \$500,000pa (excl. GST and excluding outgoings);
- 5.5.4. The Lease application requires capital investment by the Harbour Trust in non-condition based improvements to the Premises of \$500,000 (excl. GST) or more;
- 5.5.5. The Lease would result in a significant ongoing business relationship with an applicant for a use which is novel or unique and likely to involve material legal or reputational risk to the Harbour Trust; or
- 5.5.6. The Lease is more than 25 years, and not longer than 35 years (in which case the application is subject to the approval process detailed in *subsection 5.6*).
- 5.5.7. Lease applications which are deemed to be high risk arrangements must be recommended by TSC to the Members of the Trust for approval. The Chair of the TSC or the Harbour Trust Executive Director will present the recommendation to the Members of the Trust for approval.

5.6. Approval process for Leases longer than 25 years, and not longer than 35 years.

- 5.6.1. The Harbour Trust must comply with section 64B-D of the *Act* and adhere to the Leasing Protocols.

5.7. Approval process for Leases longer than 35 years.

- 5.7.1. In accordance with section 64B of the *Act*, the Harbour Trust will not enter into a Lease longer than 35 years.

5.8. External approvals required for long term and high risk Leases

- 5.8.1. The Harbour Trust must comply with section 64A-D of the *Act*, the 2006 tripartite agreement between the Harbour Trust, the Commonwealth and the State of NSW, and adhere to the Leasing Protocols.

5.9. Short Term Leases

- 5.9.1. The Executive Director has authority to approve short-term uses, defined as 12 months or less duration, without undertaking a Competitive Application Process or Open Leasing Process. This exception is intended to provide for specific uses under commercial agreements that do not exceed a 12 month tenure. Lease extensions or

renewals are subject to TSC approval. In all respects any arrangements entered into under this exception must meet the Harbour Trust's objectives and comply with the Tenant Selection Evaluation Criteria.

- 5.9.2. The Executive Director has the authority to approve meanwhile uses, defined as 3 years or less duration, without undertaking a Competitive Application Process or Open Leasing Process. This exception provides for utilisation for 3 years or less duration, of vacant Premises until they are bought back into leasable stock. It may also refer to making use of vacant Premises in advance of redevelopment. Lease extensions or renewals are subject to TSC approval. In all respects any arrangements entered into under this exception must meet the Harbour Trust's objectives and comply with the Tenant Selection Evaluation Criteria.

5.10. Unsolicited Proposals

- 5.10.1. An Unsolicited Proposal is an approach to the Harbour Trust, from the community, businesses, or other government agencies ('Proponent'), with a proposal, in circumstances where the Harbour Trust has not requested the approach. This may include a proposal to lease, build and/or finance infrastructure, or provide goods and services.
- 5.10.2. Generally, the Harbour Trust's leasing approach is to test the market by way of the Competitive Application Process, however to defray costs to the government and public and stimulate and encourage investment and innovation, the Harbour Trust may from time to time, consider Unsolicited Proposals which have unique and innovative attributes, such that others could not deliver with the same value-for-money and furthering of the Harbour Trust's objectives.
- 5.10.3. Unsolicited Proposals will follow a four-stage assessment process to guide evaluation, which can be found in Leasing Protocols (section 10):
- 5.10.4. Proponents will be provided with written feedback at each Stage stating whether their submission has progressed or declined with reasons behind a decision not to proceed. In the event the proposal is referred to an alternative process, such as the Competitive Application Process, details will be provided.
- 5.10.5. In the assessment of Unsolicited Proposals, there is need for high levels of accountability. The assessment process identifies responsibilities, provides feedback mechanisms, and requires all activities and decision making to be appropriately documented.
- 5.10.6. In order to provide Proponents confidentiality, but at the same time maintaining transparency for the public interest; all Unsolicited Proposals submitted will be kept confidential at Stage 1 and 2, however at Stage 3 a summary of the proposal will be made publicly available, via the Harbour Trust's website and at the end of Stage 4, the Harbour Trust website will be updated with the assessment outcome.
- 5.10.7. In support of the public interest and transparency, the Harbour Trust will engage community consultation for larger scale Unsolicited Proposals. It is difficult to define 'Larger scale' Unsolicited Proposals however these may include, but are not limited to,

proposals which may involve considerable works, affect local residents or alter a site's existing use, such as a local council using a car park for the purposes of a scheduled community market.

5.10.8. Proponents may be considered for a rental subsidy if found to qualify and be approved (section 3)

5.10.9. Unsolicited Proposals will not be considered for First Time Leasing opportunities (*subsection 5.1*).

6. OTHER LEASING ITEMS

6.1. Lease Term

6.1.1. The Lease term will be determined by legislative requirements and the Harbour Trust; depending upon the location of the Premises, the extent of capital improvements proposed, other works proposed by the Harbour Trust in that locality, and current market conditions for Leases

6.2. Approval of Leases

6.2.1. All Lease applications must be approved by the TSC, subject to the value and term thresholds for high-risk arrangements (*subsection 5.5*). Approvals (as contained in the document) granted by the TSC are to be reported to the Members of the Trust for information purposes.

6.3. Rejected Applications

6.3.1. The Harbour Trust has no appeals process and any decision taken under this Leasing Policy is final.

6.4. Subject to contract

6.4.1. Approval of an application to Lease Premises must always be subject to the signing of a Lease agreement satisfactory to the Harbour Trust. *Leasing Protocols* apply.