



LEASE APPLICATION – EVALUATION PROTOCOL

This protocol sets out the responsibilities and processes to be followed by Trust Officers when assessing Lease applications and proposals.

1. Tenant Selection Committee

- 1.1. **Establishment** – The Tender Selection Committee (TSC) is established at the instigation of the Board and Executive Director
- 1.2. **Responsibility** - The TSC is responsible for the management of the tenant selection process. The TSC will itself evaluate applications or proposals for more significant Buildings and provide guidance and instruction to Trust Officers evaluating other applications and proposals.
- 1.3. The TSC will make recommendations to the Executive Director or Board (when required to do so), to proceed with an application or proposal.
- 1.4. **Composition** - The TSC will have a minimum of 5 members. The Chair will be a Board member appointed to the TSC by the Board, or such other person approved and appointed by the Board. The TSC members will include the Chair, the Executive Director and/or the Deputy Executive Director and the member of the Trust's executive team responsible for property leasing. Other members may be appointed by the TSC at its discretion.
- 1.5. The TSC may seek specialist advice to assist in its functions where it deems it appropriate.
- 1.6. A majority of the members of the TSC shall constitute a quorum.

2. Tenant Selection Criteria

- 2.1. All leasing applications and proposals must be assessed against the Tenant Selection Criteria detailed in the Leasing Policy.
- 2.2. When assessing an application or proposal against the Tenant Selection Criteria Trust Officers should take into account the Assessment Tool in the schedule to this protocol.
- 2.3. 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 Buildings or leasing opportunity.

- 2.4. Any additional criteria determined by the TSC will be publicised by the Trust when offering the leasing opportunity to the market. Weightings will not be publicised.

3. Conflict of Interest

- 3.1. All TSC members and other Trust Officers involved in assessing leasing applications or proposal (Evaluators) are required to review the Trust's Code of Conduct and Fraud Policy which require members to act impartially and ethically before commencing any evaluation process.
- 3.2. If 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 supervising officer. Such declarations, including nil returns, must be recorded in writing and should be updated and signed off at every meeting of the TSC. Unless they declare an interest themselves, the Chair of the TSC or the Executive Director 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 competitive application evaluation process. Any interests declared by the Chair of the TSC should be referred to the Chair of the Board who may nominate himself/herself or elect an alternative member of the Board to act as Chair of the TSC in relation to the matter.

4. Confidentiality

- 4.1. Applications and proposals must be treated as Confidential and information concerning the evaluation of applications and proposals (including the identity of evaluators and the progress of the evaluation) should be treated as confidential.
- 4.2. No discussion must occur with any person outside of the TSC, the Executive Director, the Chair of the Board or any officers or advisers engaged to assist with the evaluation, regarding any aspect of the evaluation process without the approval of the Tender Selection Committee Chair.

5. Security

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

6. Evaluation Procedure – Competitive Application Process

- 6.1. Overview of the Process
- a. Stage 1 – Receipt and registration of the application;
 - b. Stage 2 – Screening of application against mandatory requirements;
 - c. Stage 3 – Qualitative evaluation of application against the Tender Selection Criteria;
 - d. Stage 4 – Clarifications and investigations (if required); and

e. Stage 5 –Recommendation.

6.2. Stage 1 - Receipt of Competitive Applications

- a. All competitive applications, regardless of whether they have arisen from a Call for Expressions of Interest or a Request for Proposals, must be in writing and placed unopened in the tender box at the Trust's nominated location prior to the closing date.
- b. On or after the closing date, all competitive applications will be opened, registered and numbered by Trust staff nominated by a member of the TSC in the presence of a Corporate Services Officer or a member of the TSC. Any applications received after the closing date must be referred to the Chair of the TSC for instruction on how to proceed. Subject to any exonerating circumstances, to ensure fairness, generally late applications should be rejected.
- c. All competitive applications will be acknowledged in writing as soon as feasible after opening the tender box by the responsible Trust officer. Applicants should be made aware of their reference number for future correspondence.
- d. When not being evaluated, all competitive applications must be kept secure for the duration of the tenant selection process. The member of the Trust's executive team responsible for property leasing will be responsible for the security of the applications.
- e. Upon completion of the Competitive Application Process applications must be filed in accordance with the Trust's normal record keeping policies.
- f. The contents and number of applications must be kept confidential and should not be discussed with the general public, the media or other staff except as authorised by the Executive Director and on a 'need to know' basis.

6.3. Stage 2 – Screening Applications against mandatory requirements

- a. All applications must be assessed initially by the member of the Trust's executive team responsible for property leasing to determine if the proposed use is consistent with the land use requirements of the Trust's Comprehensive Plan and the relevant Management Plan. If the proposed use is not so compliant the application must be rejected.

6.4. Stage 3 -Qualitative Evaluation against Tenant Selection Criteria

- a. Competitive applications will be evaluated against the Tenant Selection Criteria and any other applicable selection criteria determined by the TSC and publicised during the Competitive Application Process.
- b. The evaluation against non mandatory criteria is a matter of judgement undertaken on the basis of the expertise or experience of the relevant evaluator. The evaluation will be recorded in writing in such a way that it is clear to what extent a competitive application has or has not met the selection criteria. A tool is provided in the attachment to this protocol to assess evaluators in this process.

- c. The evaluation of all competitive applications may be carried out:
 - i. Individually by each member of the TSC; or
 - ii. By members of the TSC acting as a group; or
 - iii. By Trust staff nominated by a member of the TSC under the oversight of that member of the TSC. In this instance, a summary and a recommendation of preferred applicants will be prepared for the TSC and all competitive applications will be available for review by the TSC.
- d. In evaluating the financial aspects of an application, the commercial viability of the proposed lease terms should be checked against either other Trust leases, appropriate market transactions and/or by independent valuation, as appropriate. The financial history of the applicant and the capacity of the applicant to meet its financial obligations in the application should be checked using a mix of credit agencies, written statements from banks or accountants and referees as required.
- e. During the course of evaluating applications, TSC members or delegated staff may make further enquiries of applicants to clarify aspects of their application. All further enquiries should be handled by a single person within the Trust nominated by a member of the TSC and must be in writing. Only the applicant's individual application may be discussed – no information regarding the content or number of other applications may be given.

6.5. Stage 4 – Clarifications and Investigations

- a. In the course of conducting the evaluation, the TSC Chair may consider that it is appropriate to request the applicant to provide clarification of an aspect of its application to assist in the conduct of the evaluation. Clarification requests should not be used to allow a applicants to 'improve' or 'repair' its application. Clarifications must focus on addressing an ambiguity, error or omission, which is relevant to the evaluation of the application.
- b. The TSC Chair, in consultation with the relevant evaluators, will consider whether additional probity, financial and security checks will be undertaken.
- c. The TSC Chair will, in consultation with the relevant evaluators, decide whether applicants will be asked to participate in interviews or provide presentations as part of the evaluation process. If so, an agreed list of questions or the required content of the presentation must be established by the TSC Chair prior to the interviews or presentations being conducted. Detailed minutes must be kept of any interviews or presentations.
- d. Following the clarifications, investigations or interview or presentation, the TSC must reconsider their scoring or assessment of one or more of the evaluation criteria taking into account any additional information obtained. If so, the scoring or assessment should be amended accordingly, noting the reason for the amendment.

7. Stage 5 - Recommendation

- 7.1. On conclusion of the evaluation, the TSC shall report to the Executive Director. The TSC may make such recommendation it deems appropriate, including:

- a. recommend acceptance of a competitive application for the Buildings; or
- b. nominate a short-list of applicants to be invited to participate in a second stage Competitive Application Process (Request for Proposals) where applicable, in which case the process described in Stages 1, 3 and 4 will apply to those submissions; or
- c. Recommend one or more applications whose core aspects are generally acceptable to the TSC for nominated Trust staff to enter into lease negotiations under the oversight of a member of the TSC.

7.2. Further dealing with Competitive Applicants

- a. In the event that the Executive Director or Board instructs the TSC to revise, negotiate, clarify any aspect of a competitive application or conduct a further tender process, the TSC will comply with the instructions of the Board or the Executive Director (as the case may be and report back to the Executive Director or Board (depending on who issued the instructions) on the outcome of those activities.
- b. Following the decision by either the Executive Director or the Board on whether or not to grant a lease in relation to a Building, the TSC will inform competitive applicants in writing of the outcome of their application. Where applicants are rejected the Trust should not enter into any further correspondence with the applicant regarding the decisions.
- c. The Executive Director or Board may at its discretion withhold approval of other leasing applications on the Building pending the outcome of TSC activities.

7.3. Completion of the Competitive Application Process

- a. In the event that the Trust receives no applications for the Buildings via the Competitive Application Process, or the TSC is unable to recommend any of the competitive applications received due to the applications not sufficiently meeting the Tenant Selection Criteria, the Competitive Application Process will be deemed to be complete.
- b. Where a Competitive Application Process is complete, the Trust will have fulfilled its requirement to conduct a publicly contestable leasing process for the Buildings.
- c. If no application is accepted the Building will be managed as a Subsequent Leasing Opportunity in accordance with the requirements of the Leasing Policy.

8. Assessment Procedure – Subsequent Leasing Opportunities where there is no Competitive Application Process

8.1. Receipt of Open Leasing Applications

Applications under the Open Leasing Process will only be accepted by the Trust in writing accompanied by the Trust's Open Leasing application form. Emailed applications are acceptable.

8.2. Processing Open Leasing Applications

- a. Open Leasing Applications must be consistent with the Trust's Comprehensive Plan and relevant Management Plan, including any land use requirements. Applications that are not so consistent must be rejected.
- b. The processing of Open Leasing applications is the responsibility of appointed Trust staff under the oversight of a member of the TSC, generally being the member of the Trust's executive team responsible for property leasing. The appointed Trust staff must be informed of the tenant selection procedures and their responsibilities under this policy.
- c. Prior to any evaluation of Open Leasing applications, the Trust staff must declare any actual or potential conflict of interest they may have in relation to any applications received. Such declarations must be recorded in writing. The responsible member 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 evaluation process. Any interests declared by the responsible member of the TSC should be referred to the Executive Director or Chair of the TSC.

8.3. Evaluating Open Leasing Applications

- a. Open Leasing applications will be evaluated by reference to the Tenant Selection Criteria and any other applicable selection criteria determined by the Trust and publicised during the Open Leasing Process (Other Criteria).
- b. The evaluation will be carried out by appointed Trust staff under the oversight of a member of the TSC, generally being the member of the Trust's executive team responsible for property leasing.
- c. In evaluating the financial aspects of an application, the commercial viability of the proposed lease terms will be checked against either other Trust leases, appropriate market transactions or by independent valuation, whichever is deemed most appropriate. The financial history of the applicant and the capacity of the applicant to meet its financial obligations in the application should be checked using a mix of credit agencies, written statements from banks or accountants and referees as is deemed appropriate.
- d. During the course of evaluating applications, Trust staff may make further enquiries of applicants to clarify aspects of their application.

8.4. Selection of Open Leasing Applications

- a. Under the oversight of a member of the TSC (but without reference to the full TSC) Trust staff may short-list and enter into lease negotiations with Open Leasing applicants whose applications sufficiently meet the Tenant Selection Criteria and any Other Criteria.
- b. Trust staff will make a written recommendation of Open Leasing applications which best meet the Tenant Selection Criteria and any Other Criteria to the TSC for further consideration or recommendation to the Executive Director, subject to the approval thresholds in Sections 9, 10 and 11 of the Leasing Policy.
- c. All Open Leasing applications will be available for inspection by the TSC.

9. Unsolicited Proposals

- 9.1. Unsolicited Proposals are expected to arise in only exceptional circumstances. Any unsolicited proposal is to be treated in accordance with the High Risk arrangements detailed at point 9 of the Leasing Policy.
- 9.2. On receipt, any unsolicited proposal should be referred to the TSC. The TSC will determine if the proposal is consistent with the Trust's Comprehensive Plan and relevant Management Plan.
- 9.3. If the TSC determines that the proposal is consistent with the Trust's plans, it will be referred to the Board who will determine whether or not the proposal is sufficiently exceptional to justify consideration of an application on a non-competitive basis. In making this assessment the Board should take into account the requirements of 5.3 of the Leasing Policy.
- 9.4. If the Board determines that the proposal should be considered, it should be assessed against the Tenant Selection Criteria by the TSC with additional criteria namely that the proposal should significantly add to the amenity of the relevant Trust Land and to Sydney Harbour more generally.
- 9.5. The TSC will report to the Executive Director. Taking into account the report of the TSC, the Executive Director will report to the Board on the proposal, who will be responsible for determining whether the proposal should be proceeded with or rejected.