



Creating extraordinary places on the world's best harbour.

HARBOUR TRUST LEASING POLICY

This policy sets out the principles for the leasing of buildings, facilities and land (collectively defined 'Buildings' for the purpose of this policy) on Trust sites (Lands). It replaces the *Harbour Trust Leasing Policy* approved by the Board on XXX and the XXX approved by the Board on XXX.

This policy is made in accordance with the requirements of the Trust's Comprehensive Plan

The following Trust protocols are relevant to this Policy:-

- Lease Application - Evaluation Proposals (Evaluation Protocols)
- Harbour Trust Rental Subsidy Principles for Contributory and Delivery partners (Rental Subsidy Protocols)

(Note that these protocols can change over time. The most current version of these protocols will be those found on the Trust's web site).

The policy:

- does not apply to the leasing of the Trust's residential portfolio; and
- is subject to the Rental Subsidy Protocols.

1. **Desired Leasing Outcomes**

- 1.1. All Trust leasing activity is undertaken to assist the Trust achieve the requirements and objectives of the Trust's Act, its Comprehensive Plan and relevant Management Plans.
- 1.2. All proposed uses requested by applicants or proponents must be consistent with the land uses detailed in the Comprehensive Plan and appropriate Management Plan.
- 1.3. Subject to the application of the Rental Subsidy Protocols, leasing of Trust land must generate a sustainable and diverse income stream to underpin the financial viability of the Trust and contribute to the cost of preserving, enhancing and managing the Lands.
- 1.4. Whilst individual tenancies will assist the Trust in different ways in achieving the requirements and objectives of its Act, its Comprehensive Plan and relevant

Management Plan, all Tenancies must achieve at least one (and ideally more) of the following outcomes:-

- a. assist in preserving and/or enhancing the natural, historic, scenic, cultural and recreational resources of the Lands;
 - b. facilitate re-use of Buildings to contribute to a mutually supportive mix of uses for the Lands;
 - c. provide recreational, cultural, community and educational opportunities on the Lands for public enjoyment, and
 - d. promote public visitation to the Lands by domestic and/or international visitors.
- 1.5. In addition to the above, unsolicited proposals must be unique and significantly enhance the amenity of the Trust Land and Sydney Harbour more generally.

2. Categorisation of Trust Land for leasing purposes.

- 2.1. All Trust Land available for leasing will fall within one of the following categories:-
- a. First-time Leasing Opportunity; or
 - b. Subsequent Leasing Opportunity.

3. First-time Leasing Opportunity

What is a First Time Leasing Opportunity?

- 3.1. A First-time Leasing Opportunity is defined as leasing of Buildings that have never been made available for lease by the Trust before.
- 3.2. Unless the Board approves the consideration of an unsolicited proposal, the 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 Buildings.
- 3.3. If a Competitive Application Process has commenced, the Trust will not consider unsolicited lease proposals (see point 5.2 below) or enter into direct negotiations 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 Process

- 3.4. The Competitive Application Process may apply to a single building or facility or to a number of buildings or facilities on the Lands.
- 3.5. The Competitive Application Process will be subject to the Trust's standard conditions of application as they apply at the time, and as a minimum, will be advertised on the Trust's website for 20 working days. All applications will be assessed in accordance with the Tenant Selection Criteria detailed at point 6 and the Trust's 'Lease Application Evaluation Protocols' applicable at the time.

- 3.6. The Competitive Application Process involves the Trust advertising for prospective tenants to submit a response to a Call for Expressions of Interest in Buildings. In some instances the 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 from the more competitive applications received.
- 3.7. The Trust may stipulate additional Tenant Selection Criteria. If there are additional Tenant Selection Criteria, these must be detailed in the Call for Expression of Interest or the Request for Proposal.

Information requirements for the Competitive Application Process

- 3.8. The Competitive Application Process will contain:
- a. Description, plans and specifications of the Buildings to be leased;
 - b. Information about the Lands where the Buildings are located, including permitted land uses;
 - c. The applicable conditions of application;
 - d. when relevant, information on the Trust's adopted Plans for the Buildings or Lands;
 - e. A pro forma guide setting out the information required in the competitive application;
 - f. Whether the Building is subject to the Trust's Rental Subsidy Protocols;
 - g. Details of how, where and when to submit a competitive application, and
 - h. The Tenant Selection Criteria.
- 3.9. The Competitive Application Process may also contain:
- a. A preferred range of uses for the Buildings;
 - b. The minimum terms of the lease;
 - c. The Trust's standard lease memorandum;
 - d. Heritage, environmental or design guidelines;
 - e. Information on the Development Application process, and
 - f. Any other information deemed appropriate by the Trust.

4. Subsequent Leasing Opportunity

What is a Subsequent Leasing Opportunity

- 4.1. A Subsequent Leasing Opportunity is defined as:
- a. Buildings that have gone through a Competitive Application Process and no application has been accepted; or
 - b. Previously leased Buildings which are vacated, or due to be vacated, on the expiry or termination of a lease entered into with the Trust.

Subsequent Leasing Availability List

- 4.2. Buildings available as Subsequent Leasing Opportunities may be placed on the Trust's Availability Listing on its website and/or promoted through other mediums. There are no minimum advertising requirements for the Open Leasing Process and the Trust may directly approach potential tenants or consider unsolicited enquiries for Open Leasing opportunities.

Information requirements for Subsequent Leasing Opportunities

- 4.3. An 'Availability Listing' on the Trust's website will include:
- a. Description, plans and specifications of the Buildings to be leased;
 - b. Information about the Lands where the Buildings are located, including permitted land uses;
 - c. The Open Leasing Conditions of Application,
 - d. Whether the Building is subject to the Trust's Rental Subsidy Protocols; and
 - e. Details of how to find out more information or submit an application.
- 4.4. The Availability Listing may also include:
- a. the range of uses permitted for the Building;
 - b. The minimum terms of the lease;
 - c. Information on the Trust's adopted Plans for the Buildings or Lands
 - d. Heritage, environmental or design guidelines;
 - e. Information on the Development Application process, and/or
 - f. Any other information deemed appropriate by the Trust.
- 4.5. The Trust will offer all Subsequent Leasing Opportunities to the market via its web site. Anybody is at liberty to lodge an application

Management of Subsequent Leasing Opportunity applications

- 4.6. Unless the subject of an unsolicited lease proposals (see point 5.2 below), Subsequent Leasing Opportunities must be handled in one of two ways:-
- a. via a new Competitive Application Process; or
 - b. via the Open Leasing Process.

Competitive Application Process

- 4.7. The Trust may call for applications for Subsequent Leasing Opportunities at any time, in which event the provisions relating to the Competitive Application Process at point 3 shall apply.
- 4.8. If the 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 Selection Process and only if no application is accepted.

Open Leasing Process

- 4.9. The Open Leasing Process involves the Trust entering into direct lease negotiations with any party applying for a lease of a Building or Buildings. The negotiation process can be initiated by the Trust or by applicants.
- 4.10. Negotiations of all such applications must be in accordance with the instructions and guidance of the Trust.
- 4.11. All applications for Subsequent Leasing Opportunities must be assessed against the Tenant Selection Criteria detailed at point 6 and the Trust's 'Lease Application Assessment Protocols' applicable at the time. The fact that an application has been received and is being considered does not prevent the Trust initiating or considering competing applications or initiating a Competitive Application Process in relation to the Subsequent Leasing Opportunity.

5. Unsolicited Proposals

- 5.1. Unsolicited proposals may be made at any time in relation to any Building whether it has been the subject of a Competitive Application Process or not. On receipt the proposal will be assessed to determine whether it is consistent with the relevant Comprehensive and Management Plan requirements. If it is it shall be referred to the Board for further consideration.
- 5.2. The Board may direct the Trust to assess unsolicited proposals in relation to Buildings without a Competitive Application or Open Leasing Process and whether or not the Building is a First Time Leasing Opportunity or a Subsequent Leasing Opportunity.
- 5.3. Unsolicited proposals should meet the following requirements to be considered:-
 - a. The proposal must significantly enhance the amenity of the Trust Land and more generally Sydney Harbour;
 - b. The proponent must be uniquely placed to deliver the proposal in a way that could not be achieved by another proponent. This may include delivery in private-public partnership with the Trust or government;
 - c. The proposal must be sufficiently unique to deliver a significant strategic outcome which meets the Trust's legislated objects and approved plans in a manner which could not foreseeably be achieved by reasonably anticipated alternative proposals; and
 - d. The net benefits of the proposal, taking into account whole-of-life outcomes and consistency with wider Government priorities and plans, must be such that it could not reasonably be expected to be exceeded by seeking proposals via a Competitive Applications or Open Leasing Process.
- 5.4. Unsolicited proposals must be assessed against the Tenant Selection Criteria with additional criteria namely that the proposal should significantly add to the amenity of the relevant Trust Land and to Sydney Harbour more generally.
- 5.5. Where the Board directs the Trust to assess an unsolicited proposal, the proposal is deemed to be a high risk arrangement and the approval procedures of section 9 (High Risk Arrangements) will apply.

6. Tenant Selection Criteria

6.1. The following Tenant Selection Criteria will apply to all leasing applications and proposals.

a. Planned use:

The consistency of the application/proposal with the objectives and outcomes in the Trust's adopted Plans, and the compatibility of the use with the nature and location of the Buildings and other existing or planned uses for the Lands.

This is a mandatory requirement. If the application/proposal is not consistent with the objectives and outcomes in relevant plans – the application must be set aside.

b. Economic benefit:

The competitiveness and economic value of the rental return and any capital improvements to the buildings (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 Trust arising from the 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 Lands.

d. Sensitivity to heritage and environmental issues:

How the prospective tenant proposes to respect or enhance the heritage and environmental values of the Buildings and/or Lands, especially where modifications to the Buildings 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.

7. Lease Renewals

7.1. Buildings 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 Section 4 apply.

7.2. Existing tenants may apply for a new lease under the Competitive Application or Open Leasing Process, whichever is applicable.

Renewal Request

- 7.3. Existing tenants may exceptionally apply to extend or renew a lease within the last 12 months of their lease. The 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

- 7.4. Direct negotiations with an existing tenant to extend or renew a lease on terms acceptable to the Trust will only be considered where:
- a. The application sufficiently meets the Tenant Selection Criteria;
 - 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 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 Trust's objectives, plans, and heritage and environmental requirements;
 - h. A new or extended lease would not interrupt the Trust's planned maintenance program for the Buildings; and
 - i. Entering into a new or extended lease would fulfil any other requirement deemed appropriate by the Trust.

Handling of Lease renewal applications

- 7.5. Qualifying applications from existing tenants will be evaluated in accordance with the Tenant Selection Criteria and the considerations detailed in 7.4.

Additional Provisions for Early Lease renewals

- 7.6. The Trust will not consider applications for new or extended leases before the last 12 months of the existing lease unless very significant benefits accrue to the 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 Buildings or Land.
- 7.7. The proposed restructure or sale of a tenant's business is not a qualifying circumstance.

Approval of Lease Renewals

- 7.8. Following evaluation of the application, the member of the Trust's executive team responsible for property leasing will make a written recommendation to the Executive Director for further consideration or approval of a lease renewal or extension, subject to the approval thresholds in Section 10.
- 7.9. The cumulative value of the existing and new or extended lease will apply in relation to Ministerial approval under Section 10.

Lease Term

- 7.10. The lease term will be determined by the Trust depending upon the location of the Buildings, the extent of capital improvements proposed, other works proposed by the Trust in that locality, and current market conditions for leases.

8. Approval of Leases

- 8.1. All applications for leases must be approved by the Executive Director, subject to the following value and term thresholds. Such approvals are to be reported to the Board for information purposes.
- 8.2. A lease application exceeding the following thresholds will also be subject to the relevant additional approval(s).

9. High risk arrangements

- 9.1. Board approval is required for all 'high risk arrangements' entered into by the Trust.
- 9.2. The Executive Director will determine whether a lease application is a 'high risk arrangement' by reference to the following criteria:
- a. The lease has a rental value in excess of \$500,000pa; or
 - b. The lease application requires capital investment by the Trust in non-condition based improvements to the Buildings or Lands of \$500,000 or more;
 - c. 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 Trust. High risk lease applications must be recommended by the Executive Director to the Board for approval. The Chair of the Executive Director will present the recommendation to the Board for approval; or
 - d. The lease arises from an unsolicited proposal.
- 9.3. If Board approval is required the following procedures will be followed:
- a. Following the evaluation of the application(s), the Executive Director will provide a summary of the application(s) to the Board.
 - b. Board members must declare any interest or conflict of interest they may have in relations to any applications received. Such declarations must be recorded in writing. The Chair of the Board will decide whether any such declared interest is material and may take any action he/she deems

necessary to ensure that such interests do not influence the outcome of the Leasing Process. Any interests declared by the Chair of the Board should be referred to an external probity auditor who shall determine the action to be taken in the event of a material interest by the Chair.

- c. The Executive Director shall make a recommendation to the Board on which application(s) to approve or pursue further. Board members who are not members of the Tenant Selection Committee may direct the Tenant Selection Committee to consider additional issues which they consider are directly relevant to the recommendations of the Tenant Selection Committee, but shall not otherwise participate in the deliberations of the Executive Director.
- d. The outcome of the Board's deliberations must be confirmed by Board resolution.

10. Leases over \$1m

- 10.1. The Sydney Harbour Federation Trust Act 2001 requires the approval of the Minister for leases (including options) which result in the receipt by the Trust of an amount exceeding \$1m.

11. Term thresholds

- 11.1. The Sydney Harbour Federation Trust Act 2001 requires:
 - a. Approval of the Minister for leases or licences which extend beyond the 19th September 2033, and
 - b. Concurrence of Parliament for leases or licences exceeding 25 years.
- 11.2. The 2006 tripartite agreement between the Trust, the Commonwealth and the State of NSW requires the approval of the State for leases at North Head Sanctuary which extend beyond 31 December 2031.

12. Subject to contract

- 12.1. Approval of an application to lease Buildings must always be subject to the signing of a lease agreement satisfactory to the Trust.

13. Rejected Applications

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

14. Exception to the Leasing Policy for Short Term Leases

- 14.1. The Executive Director has authority to approve the granting of a lease or licence for 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 special or "one off" uses, for example filming, for which it is not appropriate to carry out a publicly contestable process. Lease extensions or renewals are subject to Executive Director review. In all respects any arrangements entered into under this exception must meet the Trust's objectives and comply with the standard selection criteria.

14.2. The Board has authority to approve the granting of a lease or licence for special events and filming without undertaking a Competitive Application Process or Open Leasing Process.

Author	Executive Officer	October 2015
Reviewer	Executive Director, Deputy Executive Director and Director of Property & Business Development	November 2015
External Probity Review	APAC Probity Advisory and Auditing Consultants	26 November 2015
Board approval	Board Meeting	9 December 2015
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Amended	Board Meeting	23 June 2017
Next review		January 2018