



SYDNEY HARBOUR FEDERATION TRUST LEASING PROTOCOLS

Leasing Protocols Introduction

The following Leasing Protocols ('Protocols') set out the processes to be followed by the Sydney Harbour Federation Trust ('Harbour Trust'), when assessing lease and license applications and proposals. It outlines the legislative requirements for consideration of leases and the steps to follow if a decision is made to proceed with a lease application.

The Harbour Trust's Leasing Policy, available via the Harbour Trust's website, provides clear guidance on the relevant principles, criteria and guidelines that reflect legislative requirements for the grant or renewal of leases over Harbour Trust buildings, facilities, and land (collectively defined as 'Premises').

The following Protocols are subject to the Harbour Trust's Leasing Policy and the Harbour Trust's *Rental Subsidy Policy for Contributory and Delivery Partners* (known as the *Rental Subsidy Policy*, available via the Harbour Trust's website).

1. First Time Leasing Opportunities

- 1.1. A First Time Leasing Opportunity is defined as the leasing of a Premises that has never been made available for lease by the Harbour Trust before, or Premises that are vacant and not been offered to the market for a period in excess of ten years. These Premises must be offered to the market first via a publicly contestable process, known as the Competitive Application Process
- 1.2. Competitive Application Process
 - a. The Competitive Application Process will be subject to the standard conditions of an application as they apply at the time, and as a minimum, will be advertised on the Harbour Trust's website for 20 working days.
- 1.3. Competitive Application Evaluation Process
 - a. The Competitive Application Evaluation will follow a five stage Process:
 - Stage 1 – Receipt and registration of the application;
 - Stage 2 – Screening of application against mandatory requirements;

- Stage 3 - Qualitative evaluation of application against the Tender Selection Evaluation Criteria (if applicable);
- Stage 4 – Clarifications and investigations (if required); and
- Stage 5 – Recommendation.

1.4. **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 sent by email via a nominated inbox prior to the closing date or by USB via the given submittal process.
- b. On or after the closing date, all Competitive Applications will be registered and numbered by a Harbour Trust Officer nominated by the Tenant Selection Committee ('TSC') in the presence of another Harbour Trust 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 extenuating circumstances, to ensure fairness, generally late applications should be rejected.
- c. All Competitive Applications will be acknowledged in writing as soon as feasible 14 days after the registration of applications by the responsible Harbour 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 Harbour Trust's Executive Team responsible for Property and 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 Harbour 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 TSC and on a 'need to know' basis.

1.5. **Stage 2** – Screening Applications against mandatory requirements

- a. All applications must be assessed initially by the representative of the Harbour Trust's Executive Team responsible for Property and Leasing to determine if the proposed use is consistent with the land use requirements of the Harbour Trust's Comprehensive Plan and the relevant Management Plan. If the proposed use is not compliant the application must be rejected.

1.6. **Stage 3** - Qualitative Evaluation against Tenant Selection Evaluation Criteria

- a. Competitive Applications will be evaluated against the Tenant Selection Evaluation 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.

- c. The evaluation of all Competitive Applications may be carried out:
 - i. By a Harbour Trust Officer 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; or
 - ii. Individually by each member of the TSC; or
 - iii. By members of the TSC acting as a group.
- d. In evaluating the financial aspects of an application, the commercial viability of the proposed lease terms should be checked against either other Harbour 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 Harbour Trust Officers may make further enquiries of applicants to clarify aspects of their application. All further enquiries should be handled by a single person within the Harbour Trust nominated by a Member of the TSC and must be
- f. in writing. Only the applicant's individual application may be discussed – no information regarding the content or number of other applications may be given.

1.7. Stage 4 – Clarifications and Investigations

- a. In the course of conducting the evaluation, a Harbour Trust Officer 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 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 responsible evaluator/s, 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, these questions must not be deviated from. Detailed minutes must be kept of any interviews or presentations.
- d. Following the clarification, investigation, interview or presentation, the TSC may 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 and validation for the replacement measure.

1.8. Stage 5 - Recommendation

- a. Subject to the value and term thresholds for the high-risk arrangements, (*Leasing Policy, subsection 5.5.2*), on conclusion of the evaluation, the TSC may:
 - i. Accept a Competitive Application for the Premises; or
 - ii. nominate a short-list of applicants to be invited to participate in a second stage Competitive Application Process (Request for Proposals), in which case Stages 1-4 (*subsections 1.3-1.6*) will apply to those submissions; or
 - iii. Recommend one or more applications, whose core aspects are generally acceptable to the TSC, for nominated Harbour Trust Officers to enter into lease negotiations under the oversight of a Member of the TSC.
- b. All approvals granted by the TSC are to be reported to the Members of the Trust to note, review or approve depending on the classification of the lease type.

a. Further dealing with Competitive Applicants

1.9. In the event that the Members of the Trust 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 Members of the Trust and report back to the Members of the Trust on the outcome of those activities.

- a. Following the decision by the Members of the Trust on whether or not to grant a lease in relation to a Premises, the TSC will inform Competitive Applicants for First Leasing Opportunities or High Risk arrangements in writing of the outcome of their application. Where applicants are rejected, the Harbour Trust should not enter into any further correspondence with the applicant regarding the decision.
- b. The Members of the Trust may at its discretion withhold approval of other leasing applications on the Premises pending the outcome of TSC further dealings.

1.10. Completion of the Competitive Application Process

- a. In the event that the Harbour Trust receives no applications for the Premises 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 Evaluation Criteria, the Competitive Application Process will be deemed to be complete.
- b. Where a Competitive Application Process is complete, the Harbour Trust will have fulfilled its requirement to conduct a publicly contestable leasing process for the Premises.
- c. If no application is accepted, the Premises will be managed as a Subsequent Leasing Opportunity in accordance with the requirements of the *Leasing Policy (subsection 5.2)*.

2. Subsequent Leasing Opportunities

The Subsequent Leasing approach is via a new Competitive Application Process, however from time to time the Harbour Trust may handle via the Open Leasing Process, in order to deliver the Harbour Trust's objectives and priorities.

Subsequent Leasing - Competitive Application Process

- 2.1. All applicants are to be assessed in accordance with the Competitive Application Process (section 1).

Subsequent Leasing – where there is no Competitive Application Process

2.2. Receipt of Open Leasing Applications

- a. Applications under the Open Leasing Process will only be accepted by the Harbour Trust in writing accompanied by the Harbour Trust's Open Leasing Application Form. Applications are to be emailed to the nominated inbox or hand delivered to the Harbour Trust nominated address/es.

2.3. Processing Open Leasing Applications

- a. Open Leasing Applications must be consistent with the Harbour Trust's Comprehensive Plan and relevant Management Plan, including any land use requirements. Applications that are not consistent must be rejected.
- b. The processing of Open Leasing Applications is the responsibility of the appointed Harbour Trust Officer under the oversight of a Member of the TSC, generally being the representative of the Harbour Trust's Executive Team responsible for Property leasing. The appointed Harbour Trust Officer must be informed of the tenant selection procedures and their responsibilities under the Leasing Policy.
- c. Prior to any evaluation of Open Leasing Applications, the Harbour Trust Officer must declare any actual or perceived 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.

2.4. Evaluating Open Leasing Applications

- a. Open Leasing Applications will be evaluated by reference to the Tenant Selection Evaluation Criteria and any other applicable selection criteria determined by the Harbour Trust and publicised during the Open Leasing Process (Other Criteria).
- b. The evaluation will be carried out by appointed Harbour Trust Officer(s) under the oversight of a Member of the TSC, generally being the representative of the Harbour 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 Harbour 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, Harbour Trust Officers may make further enquiries of applicants to clarify aspects of their application.

2.5. Selection of Open Leasing Applications

- a. Under the oversight of a Member of the TSC (but without reference to the full TSC), Harbour Trust Officers may short-list and enter into lease negotiations with Open Leasing applicants whose applications sufficiently meet the Tenant Selection Evaluation Criteria and any Other Criteria.
- b. Harbour Trust Officers will make a written recommendation of Open Leasing Applications which best meet the Tenant Selection Evaluation Criteria and any Other Criteria to the TSC for further consideration subject to the approval thresholds in the *Leasing Policy (subsection 5.5.2)*.
- c. All Open Leasing Applications will be available for inspection by the TSC.

3. Lease Renewals

- a. Lease renewals are classified as Subsequent Leasing opportunities and therefore must be handled via the Competitive Application Process (section 1), or via the Open Leasing Process (section 2).
- b. As per the *Leasing Policy (subsection 5.1.1)*, if the Premises has not been offered for lease by the Harbour Trust before or the Premises has been vacant and not offered to the market for a period in excess of ten years, the Premises must be offered via a Competitive Application Process. Otherwise, determination of the classification of leasing will be subject to the Executive and/or Harbour Trust Officers responsible for Property and Leasing. Consideration should be given to:
 - i. Current market rental value of a property relative to the cost of conducting a competitive process;
 - ii. Whether a recently completed competitive process has not produced a satisfactory lease outcome;
 - iii. Which leasing process would maximise the Harbour Trust's objectives; and
 - iv. Which process leads to the best value and demonstrates that the process will satisfy a Harbour Trust's probity assessment.

4. Subleasing of Harbour Trust Premises

- 4.1. All subleasing applications will be evaluated by reference to the Tenant Selection Evaluation Criteria and any other applicable selection criteria determined by the Harbour Trust.
- 4.2. The evaluation and approval will be carried out by the TSC.
- 4.3. During the course of evaluating subleasing applications, Harbour Trust Officers may make further enquiries of applicants to clarify aspects of their application.

5. Approval of leases involving High Risk Arrangements

- 5.1. Approval from the Members of the Trust is required for all 'high risk arrangements' entered into by the Harbour Trust.
- 5.2. The TSC will determine whether a lease application is a 'high risk arrangement' based on the criteria listed in the *Leasing Policy (subsection 5.5.2)*.
- 5.3. If approval of the Members of the Trust is required, the following procedures must be adhered to:
 - a. Following the evaluation of the application(s), the TSC will provide a summary of the application(s) to the Members of the Trust.
 - b. Members of the Trust must declare any interest or conflict of interest they may have in relation to any applications received. Such declarations must be recorded in writing. The Chair of the Members of the Trust 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 Members of the Trust 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 TSC shall make a recommendation to the Members of the Trust on which application(s) to approve or pursue further.
 - d. The outcome of the deliberations of the Members of the Trust must be confirmed by a resolution of the Members of the Trust.

6. Approval Procedure for leases longer than 25 years, and not longer than 35 years

- 6.1. Following a Competitive Application (section 1) or Open Leasing Process (section 2) the Harbour Trust will identify a new lease. Each process may have different submission requirements and will be tailored to the specific opportunity, in line with the *Leasing Policy (sections 5.1 and 5.2 respectively)*.
- 6.2. The Harbour Trust will prepare Heads of Terms (for internal reference only) (*subsection 6.12*), the written Lease Proposal and draft Statement of Reasons ('SoR') for consultation purposes.

- 6.3. The Members of the Trust will review, evaluate, and approve the written Lease Proposal and draft SoR.
- 6.4. The Harbour Trust, in accordance with section 64B of the *Sydney Harbour Federation Trust Act 2001* ('the Act'), will provide the Lease Proposal and draft SoR to the relevant Community Advisory Committee ('CAC'); and invite the committee to provide comments on the draft SoR within a 28-day period.
- 6.5. The Harbour Trust, in accordance with section 64B of the Act, will make the Lease Proposal and draft SoR publicly available for a period of at least 28 days; and invite the public to provide comments on the draft SoR within a 28-day period.
- 6.6. For the purposes of *subsection 6.5*, publicly available includes but is not limited to, publishing it on the Harbour Trust's website or the Department's website.
- 6.7. In accordance with section 64C of the Act, in finalising the SoR, the Harbour Trust will:
 - a. Include an outline of the consultation undertaken;
 - b. Consider any comments provided by the Community Advisory Committee and from public consultation; and
 - c. Include any comments provided by the Community Advisory Committee and from public consultation.
- 6.8. The Harbour Trust tables the written Lease Proposal and finalised SoR in Parliament. If the proposal is disallowed the Harbour Trust may:
 - a. Terminate the applicants Lease Proposal, or;
 - b. Amend the proposal and submit again via the approval process for leases longer than 25 years, but less than 35 years.
- 6.9. If the proposal is not disallowed, the Harbour Trust will provide the written Lease Proposal and finalised SoR to the Minister, seeking Minister's approval under section 64D of the Act, for the lease to which the SoR relates.
- 6.10. Upon Ministerial approval, Members of the Trust may approve the lease as per requirements of the High Risk Procedures (*subsection 5*).
- 6.11. The final SoR will be published on the Harbour Trust's website after the lease has been registered on the Federal Register of Legislation under the *Legislation Act 2003*, in accordance with section 64C of the Act.

Heads of Terms

- 6.12. The Heads of Term's ('HoT') is a preliminary document setting out the lease terms agreed in principle between the prospective tenant and the Harbour Trust.
- 6.13. The HoT's will contain the commercial terms including :
 - a. The proposed lease term;

- b. Any option terms;
- c. Key dates; and
- d. Financial terms (e.g. rent, outgoings, rent reviews and incentives (if applicable))

Information requirements of the Lease Proposal

6.14. In accordance with section 64B of the *Act*, the Lease Proposal will contain:

- a. The proposed Lessee;
- b. The Premises subject of the proposed lease;
- c. The period of the proposed lease; and
- d. The uses of the Premises permitted under the proposed lease.

Information requirements of the Statement of Reason

6.15. In accordance with section 64B of the *Act*, the SoR will contain the Harbour Trust's rationale supporting the grant of the proposed lease for a period that is longer than 25 years, and not longer than 35 years, consistent with the objects of the *Act* as set out in section 6 of the *Act*, and the provisions of the plans approved under Part 5 of the *Act*.

7. Approval process for leases longer than 35 years

7.1. The *Act* does not allow for leases longer than 35 years.

8. External approvals required for long term and high value leases

8.1. The *Act* requires:

- a. the approval of the Minister to be obtained prior to entry into leases which result in the receipt by the Harbour Trust of an amount exceeding \$5 million, subject to annual adjustment to reflect CPI (section 64 of the *Act*);
- b. before entering into a proposed lease that is longer than 25 years, but not exceeding 35 years, a written proposal and statement of reasons to be laid before Parliament and subject to disallowance and the approval of the Minister (section 64B, 64C and 64D of the *Act*).

8.2. The *Act* provides that in working out the period or value of a lease:

- a. assume that any option or right to extend or renew the lease will be exercised; and
- b. take into account the period and value of the lease as so extended or renewed.

8.3. The 2006 tripartite agreement between the Harbour 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.

9. Licenses and meanwhile uses

9.1. Licenses and meanwhile uses must comply with the *Leasing Policy (section 5.9)*

10. Unsolicited Proposals

10.1. An Unsolicited Proposal is an approach to the Harbour Trust, from the community, businesses, or other government agencies (collectively defined as '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.

10.2. Unsolicited Proposals will follow a four-stage assessment process to guide evaluation:

- a. **Stage 1 Pre-Submission Concept Review:** A Proponent will submit via the given submittal process noted on the Harbour Trust's website, by email or USB, a pre-submission schedule of information. A Trust Officer will review the pre-submission, then contact the Proponent to discuss the Unsolicited Proposal's unique attributes. A member of the Harbour Trust's Executive Team responsible for Property and Leasing will then determine, from the information provided and collected, whether criteria has been met, to proceed to an initial submission.
- b. **Stage 2 Initial Submission and Preliminary Assessment:** The Proponent will then provide an initial submission detailing the proposal and highlighting its unique and innovative attributes. The TSC will assess the proposal and make a determination on whether it can proceed, taking into account:
 - i. Alignment with the requested site's Management Plan. Determination may be assessed by the Harbour Trust's Board (if required);
 - ii. Impact on current and future development plans for the site (if applicable);
 - iii. Uniqueness applying to both the proposal and the Proponent;
 - iv. Intellectual property, real property and other unique assets, which may limit the Harbour Trust opening to a Competitive Application Process;
 - v. Value-for-money to the Harbour Trust and return on investment to the Proponent; and
 - vi. Capability, standing and capacity of the Proponent.
- c. **Stage 3 Detailed Proposal & Negotiation:** Both parties will enter a non-binding memorandum of understanding (MOU), which details the terms and conditions of the proposal. Outside of the MOU the Harbour Trust will establish appropriate governance including but not limited to confidentiality, conflict of interest, appointment of ongoing Proposal Manager and Probity Advisor (if needed).
- d. **Stage 4 Negotiation of a Final Binding Offer and Execution:** Both parties will then finalise negotiations and execute a binding agreement to proceed.

- 10.3. Written feedback is to be provided to the Proponent at each Stage, by the Trust Officer. The feedback should detail whether the submission has progressed or has been declined along with reasons. In the event the proposal is referred to an alternative process, such as the Competitive Application Process, the Trust Officer is to provide details of the process.
- 10.4. A summary of the Unsolicited Proposal is to be drafted by the Trust Officer and made publicly available at stage 3. To protect the confidentiality of the parties and any commercial arrangements, only relevant details may be provided in the summary.
- 10.5. Following Stage 4, the Harbour Trust's website is to be updated with the assessment outcome.
- 10.6. For larger scale Unsolicited Proposals, including but not limited to considerable works, alteration of a site's existing use, or matters which may material effect local residents; community consultation is to be sought via the usual means.
- 10.7. Proponents may be considered for a rental subsidy if found to qualify and be approved in accordance with the Rental Subsidy Policy.
- 10.8. Unsolicited Proposals must comply with the Leasing Policy (section 5.10)

OTHER LEASING ITEMS

11. Subject to Contract

- 11.1. Subject to the execution of the contract, a Harbour Trust Officer will prepare a Heads of Terms document (*subsections 6.12-6.13*) and receive a Holding Deposit.
- 11.2. The applicant will pay the Holding Deposit (equal to the first month's rent including GST) by EFT to the Harbour Trust's bank account (nominated by the Harbour Trust in writing).
- 11.3. If the lease proceeds and the contract is executed by both the Lessee and the Harbour Trust, the Holding Deposit will be applied by the Harbour Trust to the first month's rent.
- 11.4. If the Harbour Trust does not issue lease documents to The Lessee, the Holding Deposit will be returned to the Lessee in full.
- 11.5. If the Harbour Trust issues lease documents to the Lessee, but the lease does not proceed, the holding deposit will be forfeited to the Harbour Trust in full.