

## 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 *Leasing of Land and Buildings Policy* approved by the Board on 23 June 2003 and the *Tenant Selection Procedures* approved by the Board on 28 February 2005.

The policy does not apply to the leasing of the Trust's residential portfolio.

### 1. Leasing Objectives

The key objectives of the Trust in the leasing of Buildings are:

1. To establish tenancies to assist in preserving and/or enhancing the natural, historic, scenic, cultural and recreational resources of the Lands;
2. To adaptively re-use Buildings to contribute to a mutually supportive mix of uses for the Lands;
3. To provide recreational, cultural, community and educational opportunities on the Lands for public enjoyment;
4. To promote public visitation to the Lands by domestic and/or international visitors; and
5. To 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.

### 2. Leasing Requirements

In leasing Buildings the Trust must meet the following requirements:

1. It must identify tenants whose core business and programs are consistent with the Sydney Harbour Federation Trust Act; and
2. It must identify tenants whose core business and programs are compatible with the Trust's adopted Plans for the Lands; and
3. It must comply with transparent, impartial and consistent processes; and
4. It must offer new leasing opportunities via a competitive, publicly contestable process to provide for all interested parties to make an application, prior to considering unsolicited or direct lease applications; and
5. It must ensure that lease terms and rental rates reflect current market conditions; and
6. It must be satisfied with the credentials, track record and standing of tenants to deliver the proposed use and meet their ongoing obligations.

### **3. Tenant Selection Committee**

The Tenant Selection Committee (TSC) is generally 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 Board and/or the Minister as required. The TSC will have a minimum of 5 members. The Chair will be a Board member appointed to the TSC by the Board. The TSC members will include the Chair, the Executive Director and/or the Deputy Executive Director and the Director Property and Business Development. Other members may be appointed by the TSC at its discretion.

The TSC may seek specialist advice to assist in its functions where it deems it appropriate.

A majority of the members of the TSC shall constitute a quorum.

### **4. Tenant Selection Criteria**

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

- 1. Planned use:**  
The consistency of the 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.
- 2. 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.
- 3. 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.
- 4. 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.
- 5. 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.
- 6. 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.

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.

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.

## **5. Selection Decisions**

The Trust will not enter into discussion with prospective tenants or other parties on the decisions of the TSC or the extent to which an application may or may not meet the tenant selection criteria.

## **6. Leasing Procedure – First-time Leasing Opportunities**

A First-time Leasing Opportunity is defined as Buildings that have never been made available for lease by the Trust before, or Buildings where the Trust is proposing a use for the Buildings which has not been previously offered to the market.

The Trust will 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.

The Trust will not consider unsolicited lease enquires or enter into direct negotiations with prospective tenants for first-time leasing opportunities until after completion of the Competitive Application Process.

### **6.1 Competitive Application Process**

The Competitive Application Process begins with the Trust advertising for prospective tenants to submit a response to a Call for Expressions of Interest in Buildings.

The competitive application process may apply to a single building or facility or to a number of buildings or facilities on the Lands.

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 14 days.

In some instances the TSC may direct the Trust to carry out a two-stage Competitive Application Process for Buildings. This procedure will involve an initial Call for Expressions of Interest and then further submissions via a Request for Proposals from selected applicants shortlisted in accordance with this policy.

The competitive application process will contain:

- Description, plans and specifications of the Buildings to be leased.
- Information about the Lands where the Buildings are located.
- The applicable Conditions of Application.
- Information on the Trust's adopted Plans for the Buildings or Lands.
- A pro forma guide setting out the information required in the competitive application.

- Details of how, where and when to submit a competitive application.
- The Tenant Selection Criteria including any additional criteria determined by the TSC.

The competitive application process may also contain:

- A preferred range of uses for the Buildings.
- The minimum terms of the lease.
- The Trust's standard lease memorandum.
- Heritage, environmental or design guidelines.
- Information on the Development Application process.
- Any other information deemed appropriate by the Trust.

Where the Competitive Application Process has two stages, the following processes will apply to each stage of the process.

## **6.2 Receipt of Competitive Applications**

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.

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.

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.

When not in use, all competitive applications must be kept secure for the duration of the tenant selection process. The Director of Property and Business Development will be responsible for the security of the applications.

Upon completion of the Competitive Application Process applications must be filed in accordance with the Trust's normal record keeping policies.

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.

## **6.3 Processing Competitive Applications**

All TSC members (and any staff appointed in accordance with this policy) are subject to the Trust's Code of Conduct and Fraud Policy which require members to act impartially and ethically. Prior to any evaluation of competitive applications, TSC members (and any staff appointed in accordance with this policy) must declare any actual or potential conflict of interest they may have in relation to any applications received. 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.

The TSC may request members of staff to assist in processing of applications as necessary, provided such staff are informed in advance of tenant selection procedures and their responsibilities under this policy. Such staff must also declare any interest in applicants as above.

#### **6.4 Evaluating Competitive Applications**

Competitive applications will be evaluated by reference to the Tenant Selection Criteria and any other applicable selection criteria determined by the TSC and publicised during the Competitive Application Process.

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.

The evaluation of all competitive applications may be carried out:

- Individually by each member of the TSC; or
- By members of the TSC acting as a group; or
- 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.

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.

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 Selection of Competitive Applications**

Where one or more competitive application(s) has sufficiently met the selection criteria, the TSC may:

- Accept or recommend for approval a competitive application for the Buildings in accordance with the approvals thresholds at Section 10 below; or
- Nominate a short-list of applicants to be invited to participate in a second stage Competitive Application Process (Request for Proposals) where applicable; or
- Select 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. Subject to the core aspects of the application(s) not changing significantly as a result of negotiations, Trust staff will

negotiate with the selected applicant(s) to reach agreement on lease terms which will be presented to the TSC for further consideration.

## **6.6 Further dealing with Competitive Applicants**

Following the decision by either the TSC or the Board (in accordance with Section 10 below), competitive applicants should be informed 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 of the TSC.

In the event that the TSC or Board instructs the Trust to revise, negotiate or clarify any aspect of a competitive application, the Trust will enter into such negotiations with the competitive applicant together with any external consultants (e.g. lawyers) as appropriate. Where instructed by the Board, the Chair of the TSC must report the outcome of any such negotiations to the Board.

The TSC or Board may at its discretion withhold approval of other leasing applications on the Lands pending the outcome of any negotiations.

## **6.7 Completion of the Competitive Application Process**

In the event that the Trust receives no applications for the Buildings via the Competitive Application Process, or the TSC is unable recommend for approval 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.

Where a Competitive Application Process is complete, the Trust will have fulfilled its requirement to conduct a publicly contestable leasing process for the Buildings.

## **7. Leasing Procedure – Subsequent Leasing Opportunities**

A Subsequent Leasing Opportunity is defined as:

- Buildings which remain unleased following the completion of a Competitive Application Process; or
- Previously leased Buildings which are vacated, or due to be vacated, on the expiry or termination of a lease entered into with the Trust.

Where a use is proposed for a Subsequent Leasing Opportunity which was not made available to the market via an earlier Competitive Application Process, the opportunity becomes a First-time Leasing Opportunity. In this instance the First-time Leasing Procedures in Section 6 will apply.

Where the use proposed for a Subsequent Leasing Opportunity remains unchanged on the expiry or termination of a lease, or was previously available to the market via an earlier Competitive Application Process the TSC may elect to:

- Offer the Buildings via a new Competitive Application Process; or
- Offer the Buildings via the Open Leasing Process.

In determining whether to follow the Competitive Application or Open Leasing Process for a Subsequent Leasing Opportunity, the TSC will give consideration to the following, where appropriate:

- The time elapsed since the last Competitive Application Process;
- The anticipated value, size and length of the lease;
- The potential number and diversity of appropriate alternative uses available;
- The value of capital works investment anticipated from the prospective tenant or the Trust;
- Current social, environmental, planning, cultural or political conditions applicable to the use, Lands or Buildings (eg significant changes to the Management Plan or tenant mix of the Lands);
- Current market conditions and anticipated market demand for the Subsequent Leasing Opportunity.

### **7.1 Open Leasing Process**

The Open Leasing Process involves the Trust entering into direct lease negotiations with suitable applicants introduced to the Trust by sources other than a Competitive Application Process. Such sources may include referral, advertising, unsolicited enquiry, expired tenants or agents' introductions.

The Trust will not consider unsolicited lease enquires or enter into direct negotiations with prospective tenants for First-time Leasing Opportunities.

### **7.2 Open Leasing Available Listing**

Buildings available under the Open Leasing Process may be placed on the Trust's Available 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.

An Available Listing on the Trust's website will include:

- Description, plans and specifications of the Buildings to be leased.
- Information about the Lands where the Buildings are located.
- The Open Leasing Conditions of Application
- Details of how to find out more information or submit an application.

The Available Listing may also include:

- A preferred range of uses;
- A closing date;
- The minimum terms of the lease;
- Information on the Trust's adopted Plans for the Buildings or Lands
- Heritage, environmental or design guidelines;
- Information on the Development Application process; and/or
- Any other information deemed appropriate by the Trust.

### **7.3 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.

#### **7.4 Processing Open Leasing Applications**

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 Director of Property and Business Development. The appointed Trust staff must be informed of the tenant selection procedures and their responsibilities under this policy.

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 Committee.

#### **7.5 Evaluating Open Leasing Applications**

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.

The evaluation will be carried out by appointed Trust staff under the oversight of a member of the TSC, generally being the Director of Property and Business Development.

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.

During the course of evaluating applications, Trust staff may make further enquiries of applicants to clarify aspects of their application.

#### **7.6 Selection of Open Leasing Applications**

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.

Trust staff will make a written recommendation of Open Leasing applications which best meet the Tenant Selection Criteria to the TSC for further consideration or approval, subject to the approval thresholds in Section 10.

All Open Leasing applications will be available for inspection by the TSC.

### **8. Lease Renewals**

Buildings where leases are due to expire are classified as Subsequent Leasing Opportunities and the provisions of Section 7 apply. Existing tenants may apply for a



new lease under the Competitive Application or Open Leasing Process, whichever is applicable.

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.

### **8.1 Lease Renewal Considerations**

Direct negotiations with an existing tenant to extend or renew a lease on terms acceptable to the Trust will only be considered where:

- The application sufficiently meets the Tenant Selection Criteria;
- The tenant is not proposing any significant variation to the terms of the lease, such as a change of use or control.
- The tenant has performed, and continues to perform, its obligations under the existing lease terms.
- The resources involved in managing the lease and tenant relationship have been, and are anticipated to remain, acceptable to the Trust;
- 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;
- 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;
- The tenants' activities continue to be consistent with the Trust's objectives, plans, and heritage and environmental requirements;
- A new or extended lease would not interrupt the Trust's planned maintenance program for the Buildings;
- Entering into a new or extended lease would fulfill any other requirement deemed appropriate by the Trust.

Qualifying applications from existing tenants will be evaluated in accordance with the procedures for receiving, processing and evaluating Open Leasing applications.

### **8.2 Additional Provisions for Early Lease renewals**

The Trust will not consider applications for new or extended leases outside 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.

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

### **8.3 Approval of Lease Renewals**

Following evaluation of the application, Trust staff 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 Section 10.

The cumulative value of the existing and new or extended lease will apply in relation to Ministerial approval under Section 10.2.

## **9. Lease Term**

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.

## **10. Approval of Leases**

All applications for leases must be approved by the TSC, subject to the following value and term thresholds. Such approvals are to be reported to the Board for information purposes.

A lease application exceeding the following thresholds will also be subject to the relevant additional approval(s).

### **10.1 High risk arrangements**

The Trust's Corporate Oversight and Budget Monitoring of Harbour Trust Activities Policy establishes the principle of Board approval for high risk arrangements entered into by the Trust.

The TSC will determine whether a lease application is a high risk arrangement by reference to the following criteria:

- The lease has a rental value in excess of \$500,000pa; or
- The lease application requires capital investment by the Trust in non-condition based improvements to the Buildings or Lands of \$500,000 or more; or
- 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 TSC to the Board for approval. The Chair of the TSC will present the recommendation to the Board for approval.

If Board approval is required the following procedures will be followed:

- Following the evaluation of the competitive application(s), the TSC will provide a summary of the application(s) to the Board.
- 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 Competitive Application or Open 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.
- The TSC shall make a recommendation to the Board on which application(s) to approve or pursue further. Board members who are not members of the TSC may direct the Committee to consider additional issues which they consider are

directly relevant to the recommendations of the Committee, but shall not otherwise participate in the deliberations of the TSC.

- The outcome of the Board’s deliberations must be confirmed by Board resolution.

## 10.2 Leases over \$1m

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.

## 10.3 Term thresholds

The Sydney Harbour Federation Trust Act 2001 (including amendments up to Act No. 62, 2014) requires:

- Approval of the Minister for leases (including options) which extend beyond the 19<sup>th</sup> September 2033.
- Concurrence of Parliament for leases (including options) exceeding 25 years.

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.

## 10.4 Subject to contract

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

## 11. Rejected Applications

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

## 12. Exception to the Leasing Policy for Short Term Leases

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 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 TSC approval. In all respects any arrangements entered into under this exception must meet the Trust’s objectives and comply with the standard selection criteria.

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