



## **Lease Concessions and Compensation for Works Policy**

by

**Business and Financial Services**

**Sydney Harbour Foreshore Authority**

Document Control

<b>Approved by:</b>	Board
<b>Date of Approval:</b>	February 2013
<b>Review Cycle:</b>	Annual
<b>Review Date:</b>	February 2014
<b>Division Originating:</b>	Business and Financial Services
<b>Officer Responsible:</b>	Manager, Property and Leasing

## Table of Contents

<b>1</b>	<b>GENERAL .....</b>	<b>3</b>
1.1	OVERVIEW.....	3
1.2	PURPOSE .....	3
1.3	RESPONSIBILITIES.....	3
1.4	DOCUMENT HISTORY .....	3
1.5	POLICY STATEMENT.....	3
1.6	DELEGATIONS.....	5
1.7	PROPOSED POLICY EVALUATION METHODS .....	6
<b>2</b>	<b>CONTACTS .....</b>	<b>6</b>
<b>3</b>	<b>APPENDICES.....</b>	<b>6</b>
3.1	APPENDIX A: DEFINITION OF STRUCTURAL WORKS.....	7

## 1 GENERAL

### 1.1 OVERVIEW

This policy details the assessment and approval of lease concessions and abatements, moratoriums, repayment plans, and compensation for works by tenants on properties, managed by Sydney Harbour Foreshore Authority.

Concessions may take the form of rental abatement, rental deferral and rental restructuring and may include turnover or periodic payments.

### 1.2 PURPOSE

The policy has been developed to assist the Authority's Board and management in dealing with requests by tenants who apply for lease concessions.

### 1.3 RESPONSIBILITIES

Authority staff must adhere to these guidelines when making a recommendation to the appropriate delegated officer. Conflict of interest declarations from staff who recommend each concession request are to be included in the approval memorandum.

### 1.4 DOCUMENT HISTORY

Date	Author	Modifications
September 2006	Tenant and Asset Management Services, Group Manager, Property Services	Created original Rental Concessions Policy
July 2009	Property and Asset Management, Group Manager, Property	Modifications to and renaming of the policy
March 2010	Property and Asset Management, Group Manager, Property	Modifications to the policy
December 2010	Property and Asset Management, Group Manager, Property	Modifications to the policy
January 2012	Manager, Property and Leasing	Modifications to the policy
April 2012	Director, Business and Financial Services	Update following ICAC recommendations
January 2013	Manager, Property and Leasing	Modifications to the policy

### 1.5 POLICY STATEMENT

#### 1.5.1 Lease Concessions – General

Lease concession applications from tenants must meet the following criteria before rental concessions can be considered:

- retail tenants must provide monthly sales figures for at least the previous 24 months from when the concession is sought, or where the tenant has not traded for 24 months, the tenant must provide the Authority with sales figures for the period from lease commencement to date of concession application; to enable gross occupancy cost to be calculated
- a concession must not be utilised over the longer term or to support inefficient businesses. Any concession request must include details of all prior tenant claims, approved or not approved
- The Authority needs to be satisfied that the business is attempting to address identified issues.

The concession request needs to satisfactorily address the following question:

What is the future business model/plan that will change and improve the current businesses situation?

- Finance is to review and endorse all recommendations prior to submitting to the delegated officer for approval
- a qualified valuer's opinion should be sought to reflect market rent, or occupancy cost benchmark, if this is required. The rationale and endorsement of this is to be in writing from Manager, Property and Leasing or Director, Business and Financial Services
- rental concessions for impacts on a tenant's business (retail or commercial) due to Authority works or building services failure will require verification from a suitably qualified officer or contractor. The impact needs to be quantified and documented
- the Authority will not generally consider a lease concession while a tenant is on holdover or not complying with lease conditions
- the Authority will only consider deferral of turnover rent to a limit of \$50,000. The repayment period must not exceed 6 months
- where a repayment plan is approved, the arrangements will be subject to the payment of interest on the reducing balance at the rate prescribed under the current lease/licence agreement. Where no rate is prescribed the rate applicable will be the current cost of capital applied by the Authority. This interest will apply to repayment plans covering both rent/licence fee arrears and turnover rent arrears
- where a tenant is granted a repayment plan for turnover rent the tenant will be required to acknowledge that no further repayment plans will be granted for turnover rent by the Authority during the term of the current lease. The tenant will also be encouraged to make periodic advance payments to the Foreshore Authority to cover estimated future turnover rent.

The outcome of the lease concession decision must be confirmed in writing to the tenant and placed on the property file.

If the tenant defaults on this plan, the Authority may commence action to recover the debt in accordance with the lease terms.

### 1.5.3 Compensation for Works

The standard lease memorandum distinguishes between structural works and lessee's fit-out works. The lease memorandum's definition of what constitutes structural works is included at Appendix A.

There are two scenarios that apply in the tenant seeking compensation for works that they believe are the responsibility of the Authority. One can arise from tenant undertaking work without the consent of the Authority (unauthorised works) and one where it is a result of approved works (authorised works) under an approved development application.

#### Unauthorised Works

Tenants who carry out repairs without notifying the Authority have no automatic right to recover costs from the Authority.

However, the Authority may:

- consider a claim for compensation where it can be clearly established that the Authority would have conducted the works in the near future or where it would be reasonably expected to do so if it were made aware of the works and to ensure the integrity of the premises, meet its obligations under the Sydney Harbour Foreshore Authority Act, especially where the premises is listed on the Heritage Register; and

- where the claim exceeds \$50,000, the tenant must pay for a report prepared by suitably qualified professionals (including legal advice required by the Authority) which documents the work undertaken, why it was necessary, and includes an itemised list of expenditure. This report will identify the quantum of costs which are considered reasonable under the circumstances.

### Authorised Works

Tenants should advise the Authority as soon as the works are identified where a tenant has:

- conducted works which have been consented to by the Authority either through landowner's consent, s57 or s60 applications
- discovered latent conditions it believes to be the responsibility of the Authority under the lease; and
- submitted a claim for financial contribution or compensation
- the Authority may consider a claim for contribution or compensation where it can be clearly established that:
  - the Authority is responsible for the works under the conditions of lease; and
  - the works need or needed to be undertaken at the time the tenant claims they needed to be done
- where the claim exceeds \$50,000, the tenant and the Authority may negotiate who pays for a report prepared by suitably qualified professionals (including legal advice required by the Authority) which documents the work undertaken, why it was necessary, and includes an itemised list of expenditure. This report will identify the quantum of costs which are considered reasonable under the circumstances.

### 1.6 DELEGATIONS

Lease concessions and compensation for works claims are subject to the following delegations:

- up to \$50,000 – approved by the Director, Business and Financial Services
- up to \$100,000 - approval by the Chief Executive Officer
- over \$100,000 - endorsed by the Board, followed by approval from the Chief Executive Officer

All submissions for claims in excess of \$50,000 are to be accompanied by a comprehensive written business case from the responsible Director.

The comprehensive business case must address the following:

- business case purpose
- background of client benefit claim (concession or compensation)
- legal advice received
- suitably qualified professional advice received
- Chief Financial Officer's comment
- Manager, Property and Leasing comment
- statement of compliance with Lease Concessions and Compensation for Works Policy
- policy delegation reference
- conflict of interest declarations
- recommendation.

### **1.7 PROPOSED POLICY EVALUATION METHODS**

The Authority will:

- annually review its Lease Concessions and Compensation for Works Policy to ensure ongoing effectiveness
- survey property and leasing staff to measure understanding of Lease Concessions and Compensation for Works Policy
- engage independent internal audit to verify compliance with its property-related policies and procedures.

### **2 CONTACTS**

Further information can be obtained from the Manager, Property and Leasing.

### **3 APPENDICES**

Appendix A: Definition of Structural Works.

### 3.1 APPENDIX A: DEFINITION OF STRUCTURAL WORKS

**Structural works** means any works carried out to any primary load bearing element of a structure or building or part thereof which primary function is to form the structural load supporting framework to which all internal and external claddings, roof coverings, finishes, fixtures, fittings, plant and equipment are attached and supported. For the sake of clarity, Structural Works include:

1. External and internal load bearing walls, columns, piers, footings, sacrificial render and damp courses designed to prevent the vertical migration of moisture in load bearing walls.
2. Roofing framework including bearers, rafters, batons and elements supporting roof claddings and membranes.
3. Ceiling framework including hanging beams, batons, joists and struts.
4. Floor structure including bearers, joists, floor boards, concrete slabs, columns, piers and footings.
5. Internal stairwells and associated balustrades.
6. Damp courses and flashings incorporated within walls and fixed structural elements.
7. Retaining walls.
8. Arch bars and lintels and associated flashings incorporated into the wall during construction.
9. In relation to the premises, any other work agreed in writing between the lessor and the lessee as being structural works.

Items and activities which are **excluded** from the definition of structural works include but are not limited to:

1. Any items which would normally be included in the definition of structural works but which form part of the lessee's fitout, lessee's redevelopment, equipment and/or services.
2. All applied finishes including paint, stains, wallpaper, plaster, render of tiles, membranes and coverings.
3. Any toppings, approved floor coverings and applied finishes which are to be maintained by the lessee at the lessee's cost, according to approved lessor colours and finishes.
4. All mouldings, skirting, architraves, picture railings, cabinet work and associated joinery.
5. Applied linings, claddings, finishes, paint, plaster stains, wallpaper, plaster, render, tiles, membranes, carpet or floor coverings.
6. Roof cladding material and associated flashings, drainage system, rainwater goods, gutters, rainwater heads, membranes.
7. Floor coverings, paint, coatings, oils, linings, carpets, floating floors and toppings.
8. False and suspended ceilings and systems.
9. Doors, windows, shutters, footpath pavement lights, pavement cellar doors, ladders under-stair cupboards, vents, signs and associated frames, mouldings and all hardware including hinges, locks hinges, door handles etc.

## Lease Concessions and Compensation for Works Policy

---

10. All building services fixtures, fittings, plant and equipment including plumbing, gas, drainage, stormwater, electrical, fire, communications, mechanical ventilation, air-conditioning, refrigeration, lifts hoists etc.
11. Below ground basement and cellar water proofing.
12. Footpath cellar doors, ladders, under- stair cupboards.
13. All external pavement surfaces and timber decking.
14. In relation to the premises, any work agreed in writing between the lessor and the lessee as not being structural works.