



Lease Expiry Policy

Business and Financial Services

Sydney Harbour Foreshore Authority

Document Control

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1 GENERAL

1.1 OVERVIEW

This policy deals with retail and commercial lease expiries within Sydney Harbour Foreshore Authority's portfolio and the procedures for determining lease renewals.

1.2 PURPOSE

The aim of the Policy is to provide a framework by which the Authority can determine whether to offer an existing tenant a new lease, consistent with the Lease Implementation Strategy.

1.3 RESPONSIBILITIES

It is the responsibility of all tenants when considering renewing a lease to adhere to these guidelines. If more information is required, contact an Authority Property Manager.

1.4 DOCUMENT HISTORY

| Date | Author | Modifications |
|--------------|--|---|
| April 2012 | Director, Business and Financial Services | Updates following ICAC recommendations |
| January 2012 | Manager, Property and Leasing | Review and updating of document |
| June 2008 | Property Portfolio Manager in consultation with Precinct General Managers. | Review and updating of document and inserting into policy template. |
| May 2005 | Group Manager, Property Services | Created original document |

2 LEASE RENEWAL GUIDELINES

The lease renewal guidelines are as follows:

1. The Authority will not consider a retail lease renewal more than 12 months before the existing lease expiry date, unless the tenant is proposing a major refit of the premises or has established other compelling reasons in writing
2. Commercial leases will be considered for renewal at any time within their lease term at the Authority's discretion
3. There is no automatic right for any existing tenant to have their lease renewed
4. In determining whether an existing tenant is to be offered a new lease, the Authority may consider the following criteria:
 - a. The proposed use is in line with the current precinct's lease implementation strategy
 - b. The tenant has demonstrated proven financial capacity and business viability
 - c. The tenant has a proven record of compliance with all existing lease condition; including but not limited to meeting the financial obligations under the lease
 - d. The renewed lease will meet or exceed financial benchmarks including the deemed market rent
 - e. The tenant's level of commitment to a new tenancy fitout including financial and timeframe
 - f. The impacts of the current or proposed use to any heritage building.

5. The Authority reserves the right to consider additional criteria from time to time in making its determination on lease renewals, and reserves the right to call for Expressions of Interest on a particular property as it sees fit.

3 POLICY STATEMENT

For the purposes of this document, retail includes general merchandise/specialty, café/restaurant, hotel/pub, and/or as identified by the *NSW Retail Leases Act 1994*.

3.1 PERMITTED USE AND BUILDING CONDITION

Up to 15 months prior to a lease expiry, a Building Condition Report may be prepared by the Authority to determine any works that are required to be undertaken by the tenant. Should any rectification works be required, they are to be completed at least nine months prior to lease expiry date (where practicable). Where these works are not undertaken by the tenant to the Authority's satisfaction, the tenant may be provided with at least six months notice that their lease will not be renewed.

Notwithstanding the above, the Authority may at its discretion require vacant possession for a period of time at the end of a tenant's lease to undertake base building works as deemed necessary.

For heritage buildings, the determination to renew a lease must be consistent with advice contained in the relevant Conservation Management Plan for that property and other relevant statutory obligations.

Changes to permitted use will be authorised in accordance with the Authority's delegations policy. A comprehensive business case will be required to substantiate the benefits to the Authority associated with the requested change of use.

The Authority will require tenants submitting a business case seeking changes to permitted use of a tenancy to address:

- business case purpose
- background of proposed change of permitted use
- benefits to the Authority associated with the requested change of use
- suitably qualified professional advice received
- legal advice received.

Suitable professional advice will be sought to quantify the benefits to the Authority. The Heritage and Design Manager will also assess and provide comment on the impact of the change of use.

3.2 FINANCIAL CAPACITY

Should the review outlined above indicate that the existing tenant is to be considered for a new lease, the tenant will be required to demonstrate the ability to remain solvent during any future lease period. In order to comply with this policy, the tenant will be required to provide:

1. Certified profit and loss statements, balance sheets and cash flow statements for the preceding three financial years
2. A bank guarantee for a minimum of three months' base rent plus GST for a lease term up to five years or any other amount recommended by the Authority's finance division for any lease term

3. A business plan, including future cash flow projections, for the next three years, if specifically requested
4. Evidence of the ability to raise capital (relevant to the lease proposal).

The Authority will also complete a credit analysis to determine the tenant's financial history and ongoing credit worthiness (currently with Dun & Bradstreet).

3.3 LEASE COMPLIANCE

A review of tenant lease compliance includes, but is not limited to:

1. Compliance with heritage preservation and maintenance requirements – the heritage and design manager will attest to this on each lease renewal proposal
2. Punctual rental payments
3. Any breaches or non-compliance issues in the terms of the lease
4. Adherence to the permitted use
5. Record of customer complaints
6. Provision of sales data (where applicable)
7. Adherence to trading hours.

3.4 STANDARD LEASE DOCUMENTATION

The Authority maintains generic registered retail and commercial lease memoranda. These standard documents are to be utilised where applicable. Any negotiations leading to a variation of these documents are to be highlighted in the formal approval process for consideration by the designated officer.

3.5 BASE RENT

Prior to the lease expiry date, the Authority will commission an independent market valuation to be undertaken by a valuer on the Authority's valuation panel.

This is to be undertaken for each potential lease renewal to best capture the uniqueness of the subject property and the market conditions at that time.

The current market valuation will provide the benchmark for negotiating the base rent with the tenant.

3.6 RENT REVIEWS

In all retail and commercial leases, market rent reviews are to be completed at a minimum of five year intervals.

In commercial leases, annual reviews between the lease commencement and the lease expiry date are to be Consumer Price Index, a fixed percentage or a combination of both, whichever is the greater over the previous year.

In retail leases, the rent review will be either Consumer Price Index or a fixed percentage over the previous year, and will be applied subject to the *Retail Leases Act 1994*, irrespective of tenure.

3.7 TURNOVER RENT

A percentage turnover rent will be applicable to all retail leases, and the tenant will be required to provide sales turnover figures in accordance with the retail lease memorandum.

3.8 LENGTH OF TENURE

The determination of the retail lease term is based on the proposed use and tenant fit-out investment. The general criteria including any option periods are as follows:

| | | |
|------------|---------------------------------|----------------|
| Category 1 | General Merchandise / Specialty | five years |
| Category 2 | Café / Restaurant | up to 15 years |
| Category 3 | Pub / Hotel | up to 25 years |

Extended tenure options in excess of ten years are not normally offered to the tenant during negotiation.

In 2012–13 the Authority will:

- support existing retail tenants in The Rocks by allowing them to make an offer for a lease for five years in accordance with the *Retail Leases Act*.
- for vacant premises, attracting tenants who can sustain market based rents and align with the 2012–13 tenant assessment criteria (refer 2012/13 Lease Implementation strategy Attachment A).
- In relation to existing food and beverage tenants seeking a greater than five year term, the assessment criteria at Attachment B will apply. This is in recognition of the higher fitout costs associated with operating food and beverage businesses within a heritage precinct. In terms of fitout costs, the Authority will assess the total proposed cost and the cost on a dollar per square metre basis. This work should include permanent improvements to the building that result in a residual value to the Authority. Tenants will need to demonstrate a proven track record of delivering a quality, value for money food and beverage experience.

Any exceptions to the above position will involve Board and Ministerial approval.

3.9 RENT FREE / INCENTIVE

Any rent free / incentives will be considered on the basis of tenant investment and current industry incentive levels. This is to ensure the Authority remains commercially competitive, and attracts and retains tenants in line with the current lease implementation strategy.

Suitable professional advice will be sought in relation to current market incentive levels.

3.10 PROPOSED EVALUATION METHODS OF LEASE EXPIRY POLICY

The Authority will:

- have the Board annually review its Lease Implementation Strategy to ensure ongoing effectiveness
- have the Board annually review its Lease Expiry Policy to ensure ongoing effectiveness
- engage independent internal audit to verify compliance with its property-related policies and procedures including the heritage requirements in the Lease Implementation Strategy and the Lease Expiry Policy. This audit will review every proposal for changes to Authority properties with heritage implications.

4 CONTACTS/REFERENCES

4.1 CONTACTS:

For further information relating to the policy, Property Managers can be contacted on (02) 9240 8500.

4.2 REFERENCES:

Lease Implementation Strategy 2012-13.