



Harbour Foreshore Authority

Lease Expiry Policy

Tenant & Asset Management 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 the appropriate lease terms for premises in line with the current Positioning Statement.

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 Place Manager.

1.4 DOCUMENT HISTORY

Date	Author	Modifications
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

1.5 POLICY STATEMENT

This policy and the Authority's Positioning Statement are subject to change from time to time in the Authority's absolute and unfettered discretion. It sets out indicative guidelines only, as variations to this policy may be necessary in particular circumstances.

Nothing contained in this document shall fetter the Authority in the assessment and application of its statutory declarations.

2 LEASE RENEWAL GUIDELINES

The lease renewal guidelines are as follows:

1. There is no automatic right for any existing tenant to have their lease renewed .
2. 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 Positioning Statement.
 - b. The Tenant has demonstrated proven financial capacity and business viability.
 - c. The Tenant has a proven record of compliance with all existing lease conditions; and including but not limited to meeting the financial obligations under the lease.
 - d. The renewed lease will meet or exceed financial market benchmarks; then a renewal may be favourably considered, with terms as set out in this policy.
 - e. Service, product or offering is to be consistent and supportive of the current Positioning Statement.
3. For leases requiring Board and Minister's approval, the decision of the Board / Minister of the Authority is final and binding.
4. 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.
5. Nothing contained in this document shall fetter the Authority in the assessment and application of its statutory declarations.

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 as amended*.

3.1 PERMITTED USE AND BUILDING CONDITION

Up to 15 months prior to a lease expiry, a Building Condition Report will be prepared by the Authority to determine any works that are required to be undertaken by the tenant. Should any rectification works be required, works 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 will 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.

Not less than 12 months prior to the expiry of the lease, the existing use will be reviewed in view of the current positioning statement.

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

For retail leases, the Authority will not consider a lease renewal any earlier than 12 months before the existing lease expiry date, or as stipulated by the NSW Retail Leases Act.

Commercial leases will be considered for renewal any time within their lease term.

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. Audited 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 month's base rent + GST for a lease term up to five years.
3. A business plan, including future cash flow projections, for the next three years.
4. Evidence of the ability to raise capital (if 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. Punctual rental payments
2. Any breaches of the lease
3. Adherence to the permitted use
4. Record of customer complaints
5. Provision of sales data (where applicable)
6. Adherence to trading hours
7. Compliance with heritage preservation and maintenance requirements
8. Compliance with the energy, waste management and Environmentally Sustainable Development (ESD) targets within the lease.

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, an independent market rental analysis is to be undertaken by the Authority to determine the minimum base rent.

The minimum commencement rent is to be the rent established by way of independent market analysis or otherwise as approved by the delegated officer.

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 (NSW)* as amended, 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 are as follows:

Category 1	General Merchandise / Specialty	five years
Category 2	Café / Restaurant	up to 10 years
	Subject to the proposed level of capital investment by the tenant, a term up to ten years (inclusive of options) will be considered.	
Category 3	Hotel / Pub	up to 15 years
	Subject to the proposed level of capital investment by the tenant, a term up to 15 years (inclusive of options) will be considered.	

Extended tenure options in excess of five years are not normally offered to the tenant during negotiation. However, should an option be negotiated, this will only be considered by the Board and Minister at their absolute discretion.

3.9 RENT FREE / INCENTIVE

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 Positioning Statement.

4 CONTACTS/REFERENCES

4.1 CONTACTS:

For further information relating to the policy, contact your Place Manager on (02) 9240 8500.

4.2 REFERENCES:

Nil.