



Planning,
Industry &
Environment

Leasing and Lease Expiry Policy

by

Placemaking NSW

Document Control

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1 GENERAL

1.1 OVERVIEW

This policy deals with retail and commercial leasing/licensing and lease/licence expiries within Placemaking NSW's (PMNSW) portfolio. PMNSW is committed to managing retail and commercial leases or licences through a process that:

- is fair, ethical and transparent; and
- maximises the benefits to the people of NSW by furthering the objectives of PMNSW's Retail Leasing Direction and PMNSW's objectives for commercial property while achieving an appropriate market rent.

1.2 PURPOSE

The aim of the Policy is to provide a framework to assist and guide PMNSW employees, contractors and leasing consultants in conducting the process of awarding a new or renewed lease or licence of PMNSW premises, and the management of lease and licence expiries.

1.3 RESPONSIBILITIES

It is the responsibility of all PMNSW employees, contractors, leasing consultants and tenants when considering the renewal of a lease/licence or the award of a new lease/licence to adhere to this Policy.

If more information is required, contact the Director, Leasing & Commercial, Place Management NSW.

This document should be read in conjunction with:

- The Retail Leasing Direction ([link here](#)); and
- the standard form Heads of Agreement, Lease, Lease Memorandum, Incentive Deed, and Lessor's Disclosure Statement signed-off by the appropriate delegate of PMNSW.

1.4 DOCUMENT HISTORY

Date	Author	Modifications
August 2023	Director, Leasing and Commercial	Updated to reflect PMNSW leasing process approved by COO August 2023
October 2020	Senior Portfolio Asset Manager	Update the policy to reflect changes in PMNSW's leasing processes and integrate the Lease Expiry Policy, approved by CEO Jan 2021
April 2015	Manager, Property and Leasing	Modifications to the policy
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 POLICY STATEMENT

For the purposes of this document, retail includes all uses governed by the *NSW Retail Leases Act 1994* as well as pubs / hotels. Commercial includes all other uses.

3 PROCESS OF AWARDING LEASES

PMNSW may seek to award a lease by:

- Licence Agreement or Pop Up arrangement: a short term arrangement;
- Simple Lease Renewal: renewal of an existing tenancy;
- Open Approach to Market: conducting a competitive market-testing process to seek offers from entities who are interested in leasing the premises; or
- Direct Negotiations: undertaking direct negotiations with an existing tenant of the premises or with another entity that PMNSW has identified as having an interest in leasing the premises.

PMNSW to determine which of the above approaches is appropriate in the circumstances, based on its assessment of the factors considered below.

3.1 LICENCE OR POP UP

A Licence Agreement is a short term arrangement (usually less than 12 months) for an asset (built form or other) with a value of less than \$100,000. Unlike a lease, it does not provide a Licensee with property rights in a location.

A Pop Up agreement is a short term arrangement (usually for less than 6 months) for the use of an asset that is vacant and where a long term strategy is in place. This is appropriate for retail premises only.

3.2 SIMPLE LEASE RENEWAL

A simple lease renewal is a renewal of a tenancy where a tenant has been in the same premises for a term of less than 10 years, or where the premises has been market tested within that 10 year period. A simple renewal is not seen to be contentious or pose risk to PNNSW.

A simple renewal can only be considered where the tenant has not been in breach of their lease.

3.3 OPEN APPROACH TO MARKET

As a general rule, leases should be subject to an open approach to market.

Under this Policy, if a tenant has been in the same premises for 10 years or more, the premises should generally be placed on the market. Other factors which, if present, would support the conduct of an open approach to market are:

- PMNSW forms the view that a competitive process may improve its ability to further the objectives of the Retail Leasing Direction and/or materially improve the rent it receives; and
- PMNSW is aware of another party interested in a site and would like to test the market to ensure optimal use and return.

An open approach to market can be conducted as either a Simple Approach to Market or a Complex Approach to Market.

3.3.1 Simple Approach to Market

This approach will involve the premises being advertised on public forums, such as the Leasing Agent or Property Manager's website, PMNSW's website and/or other leasing or advertising platforms for a minimum period of four weeks. Prospective tenants will be required to inspect the premises with the Leasing Agent or Property Manager and submit the PMNSW Application for Retail/Commercial Tenancy Form.

All prospective tenants will be assessed against the Lease Award Criteria (Section 4). PMNSW will evaluate all responses and identify the most suitable applicant for the lease. All leases must be endorsed by PMNSW's Executive Leasing Committee and approved by the appropriate PMNSW Delegate prior to PMNSW entering a lease.

3.3.2 Complex Approach to Market

This approach will involve the premises to be offered for lease through a Request for Tender/Request for Proposal process, which will be conducted in a manner that is consistent with the NSW Government's Procurement policies. ([Link here](#))

3.4 DIRECT NEGOTIATION

Direct negotiations are a non-competitive approach that does not involve approaching the 'open or a limited market'.

PMNSW retains full discretion to determine whether an open approach to market or direct negotiation is appropriate in the circumstances. In determining whether to conduct direct negotiations, PMNSW will adhere to the ICAC Direct Negotiations Guidelines to assess whether the factors below are present and to guide the conduct of negotiations.

- **Unsuccessful previous competitive market test.** The lease was the subject of a recent Open Approach to Market and no tenant was selected as a result of the process.
- **Uniqueness.** An entity offers a lease proposal that is unique and fits within PMNSW's Retail Leasing Direction.
- **Legislative or government policy exemption.** Direct negotiations may be conducted where an exemption is granted by statute or government policy for direct negotiations to occur.

If PMNSW has determined that it is appropriate to conduct direct negotiations with an existing tenant, the existing tenant must satisfy the Lease Award Criteria (Section 4) and achieve satisfactory results in a due diligence check.

4 LEASE AWARD CRITERIA

All responses to any lease or licence will be assessed against the Lease Award Criteria set out below.

NO.	LEASE AWARD CRITERIA
1.	The proposed use is in line with the current and approved Retail Leasing Direction (for retail leases).
2.	The applicant has demonstrated proven financial capacity and business viability and turnover is in line with industry benchmarks and growth trends.
3.	The applicant has a track record of successfully managing similar businesses or has a sound operations management strategy.
4.	The applicant has a record of compliance with lease conditions at its existing premises (where PMNSW is the landlord and/or a third party is the landlord). See below for further details.
5.	The new/renewed lease meets or exceeds current industry benchmarks rents.
6.	The applicant has committed to a high-quality fit-out of the tenancy if deemed necessary.
7.	The applicant has the capability to manage heritage impacts of the proposed permitted use.
8.	There is not a material risk of the applicant being unable to receive planning approval for the works that the applicant proposes to do for the Premises.

PMNSW reserves the right to consider additional criteria from time to time in deciding on the awarding of a lease.

5 DUE DILIGENCE

In addition to the Lease Award Criteria, due diligence checks will be undertaken for lease applicants. Due diligence checks include:

- a credit analysis on the prospective tenant to determine the prospective tenant's financial history and ongoing credit worthiness. This will include certified profit and loss statements, balance sheets and cash flow statements for the preceding three years, plus evidence of ability to raise capital if this is relevant to the lease proposal;
- history of the applicant's regulatory or legal action, including adverse findings against key personnel (this may involve conducting a company search to ascertain key personnel);
- check of the applicant's media and social media profile to determine if there are any matters that suggests the applicant is not a good corporate citizen;
- references provided by the applicant, including a reference from the relevant PMNSW portfolio manager if the applicant is an existing PMNSW tenant; and
- A business plan including cash flow projections, if requested by PMNSW.

6 LEASE COMPLIANCE

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

- Compliance with heritage preservation and maintenance requirements;
- Punctual rental payments;
- Any breaches or non-compliance issues in the terms of the lease;
- Adherence to the permitted use;
- Record of customer complaints;
- Provision of sales data (where applicable); and
- Adherence to trading hours.

For Complex Approaches to Market, tenderers or respondents will be assessed according to the evaluation criteria set out in the request for tender/proposal documents.

7 ESSENTIAL LEASE CONDITIONS

Essential lease terms are to be set to protect the interests of PMNSW, and to ensure PMNSW remains commercially competitive to attract and retain tenants in line with the current lease implementation strategy. The terms listed below should apply unless ELC approval is given to any amendment:

1. A bank guarantee for a minimum of three months' gross rent plus GST for a lease term up to five years or any other amount recommended by the Executive Leasing Committee for any lease term is required. Bank guarantees are to have no expiry;
2. Rent to be paid monthly in advance into PMNSW nominated account. ~~An executed direct debit form from an Australian bank for the monthly rent is to be provided by the tenant;~~
3. Rent is to be expressed as a rate per square metre "subject to survey" unless the leasing manager is in possession of an accurate survey plan for the premises;
4. Annual fixed rent reviews are to be set at 4%. Consumer Price Index increases are prohibited. PMNSW reserves the right to modify the review amounts where any modification can be demonstrated to further the objectives of PMNSW's Retail Leasing Direction and / or PMNSW's objectives for commercial property while achieving an appropriate market rent;
5. In all retail and commercial leases, market rent reviews are to be completed at a minimum of five-year intervals. For commercial leases, the review is to be on a face basis with a ratchet provision;
6. A precinct Activation Levy is to be charged to all retail and commercial tenants at a rate of \$25/m² of the Nett Lettable Area and are to be escalated by 4% per annum;
7. Rent must meet or exceed current industry benchmarks; this includes turnover rent where applicable for retail leases;
8. All retail leases are to contain a five-yearly premises redecoration clause; and
9. All commercial and retail leases are to provide for full make-good to base building.

8 STANDARD LEASE DOCUMENTATION

The standard form Heads of Agreement, Lease, Lease Memorandum, Works and Incentive Deed and Lessor's Disclosure Statement are to form the basis of all agreements. These documents are to be reviewed regularly and signed-off by the appropriate delegate of PMNSW.

Any negotiations leading to a material variation of the essential terms above, or these documents are to be highlighted in the formal approval process and presented to the Executive Leasing Committee and the appropriate PMNSW delegate.

9 FIT OUT PERIOD

Tenants are to be offered a maximum of 4 weeks for the fitout of premises less than 300m² and 8 weeks for premises greater than 300m².

Exceptions for complex fitouts may be approved by the Director, Leasing & Asset Management and/or the Executive Leasing Committee.

Leases must include a sunset clause requiring the tenant to complete the fitout within the specified period.

10 INCENTIVES

Incentives are to be determined based on tenant investment and current market incentive levels and must be supported with evidence by the Leasing Agent or Property Manager. This is to ensure PMNSW remains commercially competitive and attracts and retains tenants in line with the current lease implementation strategy.

The Leasing Agent or Property Manager is to ensure incentives are not funding base building works. If applicable, base building works are to be documented as a separate contribution.

Lessor's Works contributions are to be specified and capped at a dollar amount.

Incentives and rent-free periods are to be documented as a separate incentive deed.

11 LENGTH OF TENURE

The determination of the retail lease term is based on the proposed use, suitability to the Retail Leasing Direction and tenant fit-out investment.

The general criteria including any option periods are as follows:

Category 1	General Merchandise / Specialty	Up to 5 years
Category 2	Café / Restaurant	Up to 15 years
Category 3	Pub / Hotel	Up to 25 years

Mid-term break clauses by the tenant are not permitted. PMNSW may choose to include a mid-term break clause for development affected sites.

Surrender / expansion clauses are not permitted.

12 LEASE APPROVALS

Proposed leasing deals are to be endorsed by the Executive Leasing Committee. Any lease exceeding five (5) years requires the approval of the Minister as per the requirements of S.19 of the *Place Management NSW Act 1998*.

13 CHANGE OF USE

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

Any tenant submitting a business case seeking changes to permitted use of a tenancy need to address:

- Business case purpose;
- Background of proposed change of permitted use;
- Benefits to PMNSW associated with the requested change of use;
- Suitably qualified professional advice received (as appropriate);
- Legal advice received (as appropriate); and
- Heritage advice received (as appropriate).

PMNSW may request independent advice to quantify the benefits and to assess heritage impacts (as appropriate).

14 LEASE RENEWAL GUIDELINES

The lease renewal guidelines below should be read in conjunction with the Process for Awarding Leases above. In addition, the lease renewal guidelines are as follows:

1. There is no automatic right for any existing tenant to have their lease renewed.
2. PMNSW reserves the right to call for An Open Approach to Market on a particular property as it sees fit.
3. In determining whether an existing tenant is to be offered a new lease, PMNSW will consider the criteria in Section 4.
4. PMNSW reserves the right to consider additional criteria from time to time in making its determination on lease renewals.
5. PMNSW 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.
6. Commercial leases will be considered for renewal at any time within their lease term at the discretion of PMNSW.

Notwithstanding the above, PMNSW may at its discretion require vacant possession for a period 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 the property and other relevant statutory obligations.

15 PROPOSED EVALUATION METHODS OF LEASING POLICY

PMNSW will:

- request the Executive Leasing Committee to regularly review PMNSW's lease documents, policies and guidelines to ensure their ongoing effectiveness;
- cooperate with the Audit Office of NSW and Internal Auditors to verify compliance with PMNSW's property-related policies and procedures including heritage requirements. This audit will review every proposal for changes to PMNSW's properties with heritage implications.

16 GROUND LEASES

The management and disposal of any land belonging to PMNSW is determined by the *Place Management NSW Act 1998*. Under s19 of the Act, PMNSW has no power to sell or exchange core land except by way of surrender to the Crown.

Place Management NSW may, with the consent of the Minister and subject to such conditions as the Minister thinks fit, lease or grant licences in respect of core land.

A lease or licence granted under this section must not have a term that, together with the term of any further lease or licence that may be granted under an option in respect of it, exceeds 99 years.

Any proposal to amend any terms of a Ground Lease will be treated as an Unsolicited Proposal and assessed against the ICAC Direct Negotiations Guidelines.

17 CONTACTS/REFERENCES.

For further information relating to the policy, the Director, Leasing & Commercial can be contacted on (02) 8522 7615.