

SUPPLEMENTARY AGENDA



Meeting of Council

To be held via Zoom

On

Monday 27 September 2021 at 7:00 PM

14 Supplementary Items

14.1 Rent Relief for Commercial Tenants in Council Owned Facilities 2021

SUMMARY: Acting Coordinator Property Management, Paige Kennett

In August 2021, the Victorian State Government released regulations with respect to eligible lease rent relief for the period between 28 July 2021 to 15 January 2022. The temporary measures apply to tenants and landlords under certain eligible leases to mitigate the impacts of COVID-19 pandemic and related government restrictions.

Council has received requests from commercial tenants for rent relief in respect of eligible leases in Council owned property and these have been assessed according to the prescribed regulations.

RECOMMENDATION

That Council:

- 1. Note the applications for rent relief from commercial tenants as detailed in Confidential Attachment 1.**
- 2. Approve an initial total rent relief offer for the months of August, September and October 2021 of \$8,145.71, broken down into \$4,072.86 waived rent, and \$4,072.86 deferred rent.**
- 3. Authorise the Chief Executive Officer to consider and approve all future commercial rent relief offers during the relevant period that meet regulation eligibility criteria.**
- 4. Authorise the Chief Executive Officer to execute any necessary lease variations in accordance with the Regulations to give effect to these resolutions.**

1. INTRODUCTION

In August 2021, the Victorian State Government released regulations with respect to eligible leases rent relief for the period of 28 July 2021 through to 15 January 2022. The temporary measures apply to tenants and landlords under certain eligible leases to mitigate the ongoing effects of COVID-19 pandemic. The regulations outline the relevant period, eligibility criteria, requirements of tenants and landlords, timelines and methodology for calculating rent relief offers.

Commercial tenants have requested rent relief for the relevant period. Officers have followed the Victorian Government Regulations to assess rent relief requests and offers for eligible commercial tenants.

This paper details the rent relief scheme, requests made to Council and proposed offers for initial eligible rent relief requests. Due to the uncertain distinction between 'debts, fees and charges' and how they relate to the Council to CEO delegation, this paper has been brought to Council.

Future rent relief requests are expected to be received by Council under the scheme, so subsequently Council delegation to the CEO is sought to enable efficient approval of additional eligible rent relief requests during the relevant period that meet the eligibility criteria that strictly fit within the regulations.

2. DISCUSSION

Under the current delegation from Council to the CEO, the CEO can waive any fees or charges with a limit of \$5,000. The reference to 'rates and charges' under the delegation are as described by Section 155 of the Local Government Act which does not include rent. The reference to 'fees' should be read as a reference to the 'fees and charges' set by Council as part of the annual budget process and therefore does not include rent. As there is no clear distinction for where the definition of 'rent' belongs, this matter has been brought to Council. This also provides an opportunity to delegate the CEO to make these decisions in future.

An overview of the Commercial Tenancy Relief Scheme Regulations 2021 applicable to Council as landlord are as follows:

- Relevant (protected) Period: 28 July 2021 to 15 January 2022.
- Part 3 of the Regulation: Landlords and tenants must work together cooperatively and act reasonably and in good faith in all discussions and actions to which the Regulations apply.

The tenant's request:

- A rent relief application must fulfil the below requirements to be valid:
 - a. A written request which includes a statement by the tenant that the tenant's lease is an eligible lease (lease entered into before 28 July 2021, and retail or non-retail commercial lease or licence), and
 - b. An eligible tenant (carried on a business in Australia, is an SME entity, satisfies the decline in turnover test), and
 - c. Is a Small to Medium Enterprise (SME) (with under \$50 million in turnover for the financial year).
- 2. The Regulations do request the tenant elect and provide a comparative consecutive 3-month period, to assess the revenue decline (within some guidelines).
- 3. The Regulations do stipulate that the tenant must provide evidence of turnover including at least one of the following: extracts of accounting records, tenants BAS, statement prepared by a practicing accountant, and include a statutory declaration that confirms the information provided is true and correct.
- 4. Turnover amounts, must include any State Government Grants received by the tenant.
- 5. The rent relief request requires one month of revenue, with comparison period, with the landlords offer applied for the months of August, September and October. Rent relief is reassessed thereafter.
- On receipt of a conforming request a landlord must offer rent relief within:
 - a. 14 days after receiving that request, otherwise it is assumed the landlord accepts the terms offered.
 - b. Likewise, on the 15th day after the tenant receives the landlords offer, the tenant is deemed to have accepted the landlords offer, unless the tenant has not agreed to the offer, or refers the matter to the Small Business Commission.

The rent relief offer from the landlord:

- Must be based on all the circumstances of the eligible lease, and:
 - a. Relate to up to 100% of the rent payable under the eligible lease during the period; and
 - b. At a minimum, be proportional to the tenant's decline in turnover;
 - c. Provide that no less than 50% of the rent relief offered be in the form of a waiver, unless otherwise agreed in writing; and
 - d. Apply to the relevant period (28 July 2021 through to 15 January 2022).

For rent that is waived:

- The rent amount agreed by both parties to be waived, must be included in a lease variation agreement for the relevant period.

Payment of rent that is deferred:

- Any rent that is agreed to be deferred must occur in accordance with regulations unless the parties agree in writing and:
 - A landlord must not request deferred rent payments before 15 January 2022;
 - The tenant must pay the deferred rent, amortised in equal amounts over a period, of 24 months or the balance of the lease term, whichever is greater and/or as agreed; and
 - A landlord may not charge interest, fees or charges in respect of any deferred rent (reg.17).

Rent increases:

- Landlords must not increase rent under the lease during the protection period (28 July 2021 through to 15 January 2022). Any rent increase applicable during this period are totally removed, and not applied at any future date.

The lease extension:

- The Regulations prescribes that if payment of rent during the relevant period is to be deferred, then the landlord must offer the tenant an extension to the term of its lease on the same terms and conditions that applied prior to the commencement of the Regulations; and
- The extension must be for the period for which rent is deferred, unless the parties agree in writing that the rent extension offer does not need to be equivalent to the rent deferred period.
- Once all rent relief offers have been concluded for the relevant period, any lease extensions as a result of any rent relief offers are recommended to be signed and sealed by the Chief Executive Officer in accordance with the report recommendation.

Where rent relief is agreed:

- Once the tenant and landlord agree to the rent relief offer, the Regulations state that it may be effected by a variation to the lease or separate agreement.

For prior approved rent relief under the COVID-19 Omnibus Regulations (which applies in these cases before Council):

- All previously agreed deferred rental payments are to be put on hold until after 15 January 2022, at which time the tenant will resume paying the pre-agreed deferred rental payments.
- No fees, interest or other charges are applicable to this deferred rental amount.

3. CONSULTATION

Council officers have consulted with commercial tenants through the managing agents to ascertain their individual situation and receive the correct information in accordance with the regulations.

4. ENVIRONMENTAL/AMENITY ISSUES

There are no environmental/amenity issues.

5. FINANCIAL & ECONOMIC IMPLICATIONS

The commercial tenants that have requested rent relief are in varied situations, with most having to abide by a Government forced shutdown. In accordance with the Victorian Government Commercial Tenancy Relief Scheme Regulations 2021, council officers have requested and received all required documentation from commercial tenants that have requested rent relief, and calculated rent relief, with details provided in Confidential Attachment 1.

Based on the calculations for eligible and complete rent relief requests, it is recommended that Council provide an accumulated rent relief package for August, September and October of \$8,145.71, broken down into \$4,072.86 waived rent and \$4,072.86 deferred rent.

Council officers anticipate further rent relief requests during the relevant period (28 July 2021 to 15 January 2022), which as recommended to Council, will be referred to the Chief Executive Officer for decision.

6. SOCIAL IMPLICATIONS

Providing rent relief at this time encourages and supports Council's commercial tenants to remain in business and enables an accelerated recovery of our local economy from the COVID-19 pandemic.

7. RELEVANCE TO KNOX COMMUNITY AND COUNCIL PLAN 2017-2021

Goal 8 - We have confidence in decision making

Strategy 8.1 - Build, strengthen and promote good governance practices across government and community organisations

8. CONFLICT OF INTEREST

The officers contributing to and responsible for this report have no conflicts of interest requiring disclosure under Chapter 5 of the Governance Rules of Knox City Council.

9. CONCLUSION

Council is committed to supporting the community during COVID-19 pandemic. With the continuation of the Victorian Commercial Tenancy Relief Scheme Regulations for the COVID-19 pandemic, Council as landlord will support eligible commercial tenants with eligible leases in Council owned buildings, by working with them to offer rent relief that enables accelerated recovery from the COVID-19 pandemic.

10. CONFIDENTIALITY

Attachment 1 is included in the confidential agenda, having been declared confidential information pursuant to Section 77(2)(c) of the Local Government Act 1989, as the information relates to:

- personal information, including names, addresses information that reveals a person's identity that would be unreasonable to disclose in a public report;
- private commercial information, that if released would unreasonably expose the business to disadvantage because it would release financial information about the business that is not generally available to their competitors.

It is also noted that Regulation 39 of the Commercial Tenancy Relief Scheme 2021 imposes confidentiality obligations on the parties with respect to protected information obtained under or in connection with the Regulations.

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Report Authorised By: Director City Strategy and Integrity, Matt Kelleher

Attachments

Confidential Attachment 1 is circulated under separate cover