

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**CCL 12/12/2023 - ADOPTION OF THE COUNCIL PROPERTY LEASE
& LICENCE POLICY**

- 8.4 **Attachment A:** Council Property Lease & Licence Policy

- 8.4 **Attachment B:** Submission Feedback and Resolutions

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Council Property Lease and Licence Policy

December 2023

newcastle.nsw.gov.au



City of
Newcastle

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Part A Preliminary

1 Introduction

- 1.1 City of Newcastle (CN) own a wide range of land and buildings ("Council Property") which help meet the diverse needs of its residents.
- 1.2 This Policy sets out the way Council Property will be leased and licenced by individuals, organisations and businesses. It determines lease and licence terms, responsibilities, financial obligations, as well as the process for entering into new Leases and Licences.

2 Purpose

- 2.1 This Policy outlines CN's management of Leases and Licences and provides CN with a framework to support the financially sustainable, equitable, fair and transparent management of Council Property, and establishes the terms for entering into Leases and Licences.
- 2.2 The purpose of this Policy is to:
 - Establish processes for the management of Council Property that are transparent, and decisions are based on clear policies and procedures that align to relevant legislation.^{24/}
 - Provide Council Property for delivery of social, cultural, recreational, educational, environmental and other services which afford community benefits, and also for commercial return.
 - Establish the types of non-binding and binding agreements CN will enter into, and when.
 - Establish the framework for optimal use and utilisation of Council Property, that meets the communities needs and provides equitable access and affordability.
 - Ensure that CN undertakes strategic assessment of Council Property for optimal future use, and that resulting Leases and Licences reflect the objectives of Council Property.
 - Provide a clear process for CN's consideration of any proposed Lease or Licence including:
 - Specify how CN will deal with different proposals, based on Categories of Lessees and their business operating models.
 - Set the key terms of a Lease or Licence including such things as the Premises, length of term, rent and rent reviews and responsibilities of each party.
 - Establish the method for assessing market rent, the rent payable and determining any In-Kind Subsidy CN is providing.
 - Clearly show the roles and responsibilities of CN and lessee
 - Outline how owner's consent for any proposed works, grant applications and any funding being sought from CN will be considered.
 - Show the approval process for any proposed Lease or Licence or other requests of CN from Lessees.

3 Scope

- 3.1 This Policy applies to all new Leases and Licences. For the avoidance of doubt, this Policy will not apply to existing Leases or Licences (including any option terms) until such time as they are being considered for renewal or renegotiation.
- 3.2 This policy applies to CN's Community and Operational Land and Crown Land managed by CN. It applies to both land and buildings and deals with:
- Leases and Licences of CN land (land only) where the Lessee has erected or will erect their own building and associated assets.
 - Leases and Licences of CN land (no building or associated assets).
 - Leases and Licences of CN land including building and associated assets.
 - Leases and Licences of part or all of building and associated assets only.
 - Licences of land which gives the licensee occupation of land and/or premises for a set term and may specify times that the permitted use can be undertaken in the Premises (even if the lessor reserves the rights to access and use).
- 3.3 This Policy does not apply to:
- Leases or Licences administered under the *Roads Act 1993*, excepting for s.149;
 - Licences for a short-term, casual purpose as prescribed by the *Local Government (General) Regulation 2005* (s.116);
 - Surf Clubs;
 - Bowling Clubs;
 - Community Centres and Halls;
 - Tennis Clubs (except for commercial operations utilising CN tennis courts for Financial Gain);
 - Inland Pools;
 - Community Housing Providers
 - Hire of CN's bookable facilities for occasional or short-term use or non-exclusive use, that have separate charges set out in CN's published Schedule of Fees and charges. Where a Bookable Facility is referenced in this Policy, it is for context and information purposes, however Bookable Facilities will be managed outside of this Policy;
 - Leases or Licences between CN and Transport for NSW, which will be dealt with under the *Land Acquisition (Just Terms) Act*; and
 - Property which CN Leases or Licences as a Lessee for operational purposes.
- 3.4 This Policy does not preclude CN from dealing with any Lease or Licence not covered by the Policy, so long as it complies with any legislated requirements. In such cases, this Policy will guide the principals of the Lease or Licence.

4 Principles

4.1 CN commits itself to the following:

- a) **Accountability and transparency** – This Policy provides a framework for the transparent and merit-based provision of support and a system of accountability for the recipient.
- b) **Alignment with Council strategies** – This Policy aligns with Council priorities outlined in the Community Strategic Plan 2040.
- c) **Inclusiveness** – CN makes its best efforts to reach, involve and hear from those who are impacted directly or indirectly by our decisions.
- d) **Risk Management** - The appropriate management of risk to people, service, environment and property to ensure its spending is responsible and sustainable,
- e) **Sustainability** - undertake responsible and sustainable investments in infrastructure for the benefit of the local community, implement effective financial and asset management, and have regard to achieving intergenerational equity

Part B Policy Guidelines

5 Leasing and Licensing of Council Property

5.1 Council Property and Legislation

- 5.1.1 Entering into Leases and Licences for Council Property must be in accordance with the relevant legislation.
- 5.1.2 The proposed use of the Council Property must be compatible with the permitted uses in the relevant current Local Environmental Plan.
- 5.1.3 The leasing and licencing of Community Land is governed by the *Local Government Act*.
- 5.1.4 The leasing and licencing of Crown Land where CN is the Crown Land Manager is governed by the *Crown Land Management Act (2016)*.
- 5.1.5 Where a Lease or Licence is on Community Land, then the proposed use must meet the purposes of the reservation and be in accordance with an express authorisation in the relevant adopted Plan of Management (POM) (public utilities, pipes, conduits and other connections for public utilities, including ancillary works excepted).
- 5.1.6 Any Lease or Licence on Community Land greater than 5 years (including any period of options to renew) must be publicly tendered unless the Lessee is a Not for Profit. All proposed Leases and Licences must be publicly exhibited for 28 days, and entering into a Lease or Licence will be subject to any resolution of submissions. CN may elect to run a public tender at its discretion where there is no legislative requirement.
- 5.1.7 Leases and Licences over Community Land cannot be longer than twenty-one (21) years (including any period of any options to renew). Where a proposed Contract exceeds 21 years, an application to the Minister for consent must be made by CN.

5.2 Property Types

- 5.2.1 CN provide Council Property for Community Groups for the contribution to the physical, cultural, social and intellectual welfare or development of the community.
- 5.2.2 Council Property includes commercial buildings (or areas of multi-use buildings) to generate a financial return.
- 5.2.3 A multi-use Council Property may contain Leases and Licences that are for a Community Group and for a commercial return, determined by the type of proposed use by the Community Group, and in line with this Policy.
- 5.2.4 Lessees' lease or licence Council Property on an "as is" basis and must make their own enquiries for obtaining development consent for the proposed use, and the suitability of the Council Property for operating the proposed use.

5.3 Agreement Types

- 5.3.1 CN will enter into different contractual agreements depending on the proposed use and utilisation, any proposed capital works and/or financial contributions by CN and any conditions precedent that may need to be met by all parties prior to a Lease or Licence being entered into.

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- 5.3.2 A **Heads of Agreement (HoA)** sets out the key terms and conditions to be agreed between all parties, that will be incorporated into a Lease or Licence, Agreement for Lease or Licence, or Funding Deed and may contain special conditions. A HoA is non-binding.
- 5.3.3 An **Agreement for Lease or Licence (AFL)** creates a binding obligation on all parties to enter into a Lease or Licence on agreed terms, subject to agreed conditions being completed.
- 5.3.4 An AFL documents each party's rights and obligations and sets down all the requirements that have to be satisfied prior to the terms of the actual Lease or Licence taking effect.
- 5.3.5 An AFL is often used when:
- the Lessee needs to obtain consent, say for a particular use of the premises;
 - the premises are being purpose-built for the Lessee; or
 - an existing building is being renovated before the Lessee moves in.
- 5.3.6 A **Lease** enables exclusive use of Council Property for a specified term and permitted use and controls the rights and obligations of all parties to the occupancy.
- 5.3.7 A **Licence** is a contractual agreement that grants the Lessee a personal right to occupy and use Council Property for a particular purpose. It does not grant exclusive possession of the Council Property, as is the case with a Lease, and may permit the Council Property to be used by other persons.
- 5.3.8 A **Funding Deed** is a legally binding contract between all parties that sets out the proposed capital works and construction project, the funding model for the works, including contributions by all parties, any grant funding arrangements and release of funds linked to project milestones.
- 5.4 Utilisation and determining a Lease or Licence
- 5.4.1 CN recognises that many Community Groups have a strong historical affiliation with the Council Property which they use and have contributed cash and in-kind works to their Premises. However, past contributions of cash or in kind-by contributions by Lessee's on Council Property do not convey permanent or preferential access to that Council Property.
- 5.4.2 A Lease or Licence will be determined by how CN is proposing to ease or licence the Council Property and its proposed utilisation. This will guide whether the Lessee has exclusive use, limited use (by time and/or exclusivity), or if the required use of a space will be through a Hire Agreement only.
- 5.4.3 CN's objective is to optimise the use of Council Property for the greater community wherever possible.
- 5.4.4 A lease will only be provided where exclusive use on a 24/7 basis is demonstrated as the only outcome for the proposed use.
- 5.4.5 Where it is determined that the proposed use requires the space for one-off or recurring sporadic periods only, a Lease or Licence will not be entered into and the space will be managed as a Bookable Facility and a Hire Agreement will be entered into.
- 5.4.6 A proposed use that utilises Council Property to operate a full-time business and requires exclusive use will be considered for a Lease of Council Property.

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- 5.4.7 A proposed use that utilises a Council Property for set periods where the space is to be open to the public or other users at all other times will not be considered for a Lease but may be considered for a Licence.
- 5.4.8 Common Areas of Council Property will not be included in the Lessee's Premises, and responsibility for these areas will remain with CN.
- 5.4.9 Only those parts of Council Property required for the proposed use will be provided under a Lease or Licence and those parts of the Council Property will form the Premises. The Contract will clearly state the permitted use of the Premises. Operations or services that are ancillary to their core business may be considered in determining the Premises required. A separate Lease or Licence may be entered into for ancillary operations and services, in line with this Policy.
- 5.4.10 Where an existing Lessee operates under a Lease or Licence for Premises exclusively but does not require exclusive use, CN may require part or all of the Premises to be better utilised for the wider community. Where CN requires an uplift in utilisation, part or all of the Premises must be made available to be booked by the wider community.
- 5.4.11 Any fees or revenue generated from bookings is to be held by CN in a suitable internal restricted reserve.

5.5 Entering into Leases and Licences

- 5.5.1 This Policy will come into effect on the date of adoption, however, the Policy will only be enacted, upon entering into new Leases or Licences of Council Property.
- 5.5.2 CN will enter into Leases or Licences with individuals or Organisations.
- 5.5.3 CN will consider entering into new Leases or Licences under various circumstances. Where a new Lease or Licence is being considered, CN will first undertake a strategic assessment of the Council Property to determine its optimal future use. The assessment will be undertaken in consultation with the land manager and any potentially impacted asset custodians. Considerations will include:
- Alignment with this Policy, any Plan of Management (POM) and Council's Community Strategic Plan (2040), as well as any other Policies and Strategies relating to the Council Property;
 - Native Title restrictions
 - Asset Condition;
 - Use and utilisation;
 - Expected service level's v's actual service levels;
 - If it will be provided for a commercial return;
 - Any Building Asset Plan in place from time to time, relating to the Council Property being assessed;
 - Consideration of any grant funding being sought by the Lessee;
 - Consideration of any CN funding being sought by the Lessee; and
 - Proposed Heads of Agreement (including Rent).
- 5.5.4 CN will determine if the strategic assessment recommendation is either supported, supported in principle subject to Asset Advisory Committee endorsement or the recommendation is not supported.
- 5.5.5 Where:

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- The Council Property is vacant from a previous use (excluding vacant Council Property that is held for disposal, demolition, refurbishment or renewal, or is deemed unfit for habitation);
 - The Council Property is vacant as a result of being refurbished or renewed, acquired, or newly constructed; and
 - The sitting Lessee has provided notice to vacate.

5.5.6 The Council Property will be Leased or Licensed in accordance with the process outlined in **Annexure C: Process for Leasing and Licencing of new or vacant Council Property**.

5.5.7 Where:

- The sitting Lessee's Lease or Licence is due to expire within 18 months or is on month-to-month holdover.

5.5.8 The Council Property will be Leased or Licensed in accordance with the process outlined in **Annexure D: Process for Leasing and Licencing of Council Property to sitting Lessee's**.

5.5.9 Where:

- CN receive unsolicited offers to Lease or Licence Council Property for such uses including but not limited to short term site access and storage for works on public or private land adjacent to Council Property, infrastructure (including telecommunication equipment), utilities.

5.5.10 A review of the proposed Lease or Licence will be undertaken in consultation with the land manager and any potentially impacted asset custodians.

5.5.11 In determining the suitability of any proposed Lease or Licence for unsolicited offers, consideration will be given to:

- Permissibility with any current Local Environmental Plan, any applicable POM, and the legislative requirements for leasing and licensing Council Property;
- Impact on Council Property or CN assets;
- Any regulatory enforcement where CN has no control;
- Any financial gain by the Lessee as a result of the proposed use; and
- Heads of Terms that align to this Policy (including rent).

5.6 Categories

5.6.1 CN categorises Lessee's under four areas, Community Groups, Commercial, Infrastructure and Emergency Services and Short Term Uses.

5.6.2 Category 1: **Community Groups** are Organisations that provide goods, services, facilities and the provision of activities for the physical, cultural, social and intellectual welfare or development of persons.

5.6.3 Community Groups include member based fee-paying clubs, groups that charge for services and Organisations that may or may not have the capacity to generate revenue from use of the Council Property or other activities consistent with the organisational purpose (but do not operate to make a commercial profit), and include:

- Registered Clubs;

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- Scouts/Guides Groups;
 - Child Care Centres;
 - Community Service Providers (e.g. Meals on Wheels, TPI);
 - Men's Sheds; and
 - Sport and Recreation Groups.

- 5.6.4 Category 2: **Commercial Groups** are individuals or Organisations that occupy Council Property for a financial gain where the Organisations have a commercial (business oriented) profit objective; Government Organisations requiring Council Property for operational purposes on commercial terms. All terms and conditions of Leases and Licences are to be mutually negotiated to then current market terms and conditions, including market rent and incentives. For the purposes of this Policy, any residential Council Property will be treated on a fully commercial basis.
- 5.6.5 Category 3: **Emergency Services and Infrastructure Organisations** includes but is not limited to Organisations that provide Emergency Services, and Organisations that provide infrastructure such as navigation beacons, telecommunication towers and equipment, utilities and ancillary equipment and overhead walkways (administered under s.149 of the Roads Act). Where the proposed use is for private infrastructure (serving just the Lessee's proposed use and not for public purposes, and will support the Lessee's commercial operations), all terms and conditions of Leases and Licences are to be mutually negotiated to then current market terms and conditions, including market rent and incentives. For the avoidance of doubt, telecommunications infrastructure will be considered as a commercial operation and commercial market fundamentals will prevail.
- 5.6.6 Category 4: **Short-Term Uses** are generally where temporary use is required for a specific period, usually related to construction projects. They These may include access and storage on CN land for development on adjacent land or access for construction on Council Property and may be by public authorities or private individuals or Organisations. For Short Term Use Leases and Licences to private individuals or Organisations, CN will charge a rent fee as advertised in CN's Fees and Charges.
- 5.6.7 For Short Term Use Leases and Licences to public authorities, CN will not charge a rent fee so long as the use is for the direct benefit of the surrounding community.
- 5.6.8 For Short Term Uses provided for agents, consultants or contractors of CN, undertaking works or services on behalf of CN on Council Property, no rent fee will be charged.

6 Leasing and Licensing Key Terms

6.1 Lease and License Length and Options

- 6.1.1 The term proposed in a Heads of Terms, included as part of the strategic assessment of Council Property, will align to this Policy and reflect the proposed use and term required to be feasible, taking into consideration any proposed capital works expected to be covered by a Lessee.
- 6.1.2 Any proposed term will also take into consideration the future strategy for the Council Property, including any future redevelopment that may require vacant

possession. If required, CN may include a demolition clause in the Lease or Licence as a special condition, to meet the future needs of the Council Property.

- 6.1.3 Options to renew will be reviewed on a case-by-case basis as part of the strategic assessment of the Council Property.
 - 6.1.4 An option to renew at the Lessee's discretion will be considered where that is a commercially acceptable market driven outcome.
 - 6.1.5 An option to renew at CN's discretion will be considered where CN require certain conditions to be met or services provided to an agreed standard, however, an option to renew is required by the Lessee. In these cases, this will be included in the special conditions.
 - 6.1.6 The Term and Option for all Leases and Licences is determined in accordance with **Annexure E - Lease or Licence Key Terms**.
- 6.2 Market Rent, Commencing Rent, Additional Rent
- 6.2.1 Market Rent will be assessed as part of the strategic assessment of Council Property.
 - 6.2.2 Market Rent will be determined in accordance with **Annexure E - Lease or Licence Key Terms**.
 - 6.2.3 The Commencing rent will be the rent charged under a proposed Lease or Licence, from the Lease or Licence commencement date.
 - 6.2.4 The Commencing Rent may not be the Market Rent, as the Commencing Rent considers any CN In-Kind Subsidy provided.
 - 6.2.5 The Commencing Rent for all Leases and Licences is determined in accordance with **Annexure E - Lease or Licence Key Terms**.
 - 6.2.6 For all categories, where there is Financial Gain by a proposed use, CN will seek a rental return commensurate to the financial gain generated by the use of Council Property.
 - 6.2.7 Where a Community Group makes a Financial Gain from their Permitted Use, CN will reduce the value of in-kind subsidy provided. The Additional Rent charged which will be held in a suitable internal restricted reserve to be used for any future capital works on Council Property that contributes to the physical, cultural, social and intellectual welfare or development of the community.
- 6.3 In-Kind Subsidy
- 6.3.1 CN recognises the importance that Community Groups provide to the community and that in most cases, they exist as member based fee-paying groups. Their ability to generate revenue or income is limited to donations, fundraising and grants.
 - 6.3.2 For Community Groups, CN will provide an In-Kind Subsidy in the form of the amount of Market Rent CN is foregoing evaluated against the Commencement Rent and Additional Rent.
 - 6.3.3 Lessee's must make public the In-Kind Subsidy CN provides under this Policy.
- 6.4 Rent Reviews
- 6.4.1 Rent reviews will be undertaken annually during the term of any Lease or Licence.

6.4.2 Rent Review type will be determined in accordance with **Annexure E - Lease or Licence Key Terms**.

6.5 Outgoings

6.5.1 Outgoings will be charged separately to a Lessee or multiple Lessee's of a Council Property where the costs can be easily and fairly attributable to their proposed use.

6.5.2 Where any other operating costs relate directly to a Lessee's use of the Council Property, the Lessee will be responsible for paying that cost and will be specified in any special conditions.

6.5.3 Where Outgoings are not being charged, the Lease or Licence will be considered "gross" and the Market Rent will take into account comparable market gross rents.

6.6 Services

6.6.1 All Categories will be required to pay for connections, service and usage charges for any Services connected to the Council Property separately metered and servicing the Lessee.

6.6.2 Where there is no separate metering, however, sub-meters are in place, the Lessee will be responsible for usage charges.

6.7 Premises

6.7.1 The Premises will be determined as part of the strategic assessment of the Council Property.

6.7.2 Where the Premises may alter for an existing Lessee that is proposed for a new Lease or Licence, CN will determine the areas required after consulting with the affected Lessee/s.

6.7.3 A separate Lease or Licence may be provided that supports the proposed use, including but not limited to outdoor seating areas, storage areas, encroachments or parking.

7 Other Terms

7.1 Responsibilities of Each Party

7.1.1 Responsibilities of CN and Lessees are determined and included in the proposed Lease or Licence prior to execution.

7.1.2 Responsibilities are determined in accordance with **Annexure F - Lease and Licence Roles and Responsibilities**.

7.2 Repairs and Maintenance

7.2.1 Responsibility for repairs and maintenance within the Premises generally will be the responsibility of a Lessee, and will include any external maintenance, if any external areas are included within the Premises.

7.2.2 Repairs and maintenance of any common areas for the use of other Lessee's, guests and visitors to the Council Property will be the responsibility of CN.

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- 7.2.3 The Lease or Licence will specify the Lessor's (CN) Property and the Lessee's Property for clarity of responsibilities.
 - 7.2.4 The Lessee's Property may include property that is in the Premises at the Lease or Licence commencement, however, is not CN's Property.
 - 7.2.5 Repairs and Maintenance of any Lessor's Property servicing just the Lessee's Premises will be the responsibility of the Lessee.
 - 7.2.6 Repairs and Maintenance must be undertaken in a professional manner and utilising good quality materials, using qualified trades where required by legislation.

7.3 Improvements and Owners Consent

- 7.3.1 Lessee's may propose Improvements to their Premises to be able to undertake their Permitted Use.
- 7.3.2 Lessee's proposed Improvements require written consent from CN, such consent, not to be unreasonably withheld, except, where the Improvements include any structural alterations to the Council Property or propose any change in area required, changes to the façade of the Council Property or propose a change in use, such consent is to be at CN's absolute discretion.
- 7.3.3 The proposed Improvements must include professionally prepared concept plans, estimated costs of the works, prepared by a suitably qualified quantity surveyor.
- 7.3.4 The proposed Improvements must include independent planning advice from a suitably qualified planner stating the legal planning pathway (Exempt, Complying or development requiring consent).
- 7.3.5 Proposed improvements must not impact detrimentally on the Council Property structure, services or any other users of the Council Property.
- 7.3.6 Where the proposed Improvements do not consist of any change in area required, changes to the façade of the Council Property or propose a change in use, Consent for Improvements will be granted in accordance with **Annexure G - Owner's Consent Process**.
- 7.3.7 Where the proposed Improvements alters the Premises required, propose changes to the façade of the Council Property or propose a change in use, they will be determined in accordance with **Annexure H - Changes to Premises Required, Facade and Permitted Use**.
- 7.3.8 CN will include conditions on the consent that must be met
- 7.3.9 No works can commence until Owner's Consent is granted, and all applicable conditions of consent are met. Sample standard conditions of consent are shown at **Annexure I - Sample Conditions of Consent**.
- 7.3.10 CN will not be liable for any costs incurred by a Lessee in preparing their proposal, including any reports or documentation required by CN in assessing the proposal.
- 7.3.11 Owners Consent does not limit CN's statutory obligations under the EP&A Act to undertake a merit-based assessment of any resulting development application, and CN as Lessor has no statutory authority in any development consent

7.4 Funding of Improvements and Grant Applications

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- 7.4.1 It is an expectation that Lessee's will fund any proposed Improvements to their Premises.
- 7.4.2 CN recognises the benefits offered to Community Groups in the ability to apply for grant funding that can be used for the improvement and renewal of and additions to Council Property as well as development of new assets.
- 7.4.3 CN supports strategic and planned proposals for Council Property that Lessee's may be able to contribute to through grant funding, where it meets the core objectives of the Council Property and contributes to the physical, cultural, social and intellectual welfare or development of the community.
- 7.4.4 Where a Lessee proposes to fund the proposed Improvements partly or fully by way of grant funding, CN's support for the grant application will be considered in accordance with **Annexure G - the Owner's Consent Process**.
- 7.4.5 Where a Lessee proposes to seek CN funding for the proposed Improvements, the funding will be considered in accordance with **Annexure G - the Owner's Consent Process**.
- 7.4.6 Where a Lessee proposes to seek CN funding where the proposed Improvements include a change in Premises required, the funding will be determined in accordance with **Annexure H - Changes to Premises Required, Façade and Permitted Use**.
- 7.4.7 Lessee's grant applications require written support from CN and will only be granted once Owner's Consent to the Improvements is granted.
- 7.4.8 Any proposal for a Lease or Licence (or variation to a current Lease or Licence) resulting from any Lessee partly or fully funded works on Council Property, should align to the principles of this Policy and specifically, Council Property utilisation.
- 7.4.9 Where a Lessee's proposed improvements are proposing a change in the Premises required or are seeking CN funding, a variation to or a new Lease or Licence may be required and may also require a Funding Deed and or Agreement for Lease, which will be determined through the consent process.
- 7.4.10 No works, including tendering for works, can commence until an Agreement for Lease is executed by all parties.
- 7.5 Change in Use
- 7.5.1 Any proposed change of use must be consistent with any Permissibility with any current Local Environmental Plan, any applicable POM, and the legislative requirements for leasing and licensing Council Property.
- 7.5.2 Any proposed change of use that increases any Financial Gain will require a review of the terms and conditions of any Lease or Licence, including but not limited to rent, term and permitted use.
- 7.5.3 Any proposed Improvements that require a change in the Permitted Use, will be determined in accordance with **Annexure H - Changes to Premises Required, Façade and Permitted Use**.
- 7.6 Subletting and Assignment
- 7.6.1 CN may allow sub-leasing or sub-licencing of Council Property where it is determined there will not be any detrimental impact on the Council Property or its objectives and does not impact CN's risk exposure.

7.6.2 If any proposed Sub Lease or Sub Licence requires a change in use of the Lessee's Lease or Licence, CN will review the proposal in accordance with **Annexure H - Changes to Premises Required, Facade and Permitted Use**.

7.6.3 CN will review any proposed Sub Lease giving consideration to the following:

- Permissibility with any current Local Environmental Plan, any applicable POM, and the legislative requirements for leasing and licensing Council Property;
- Impact on Council Property or CN assets;
- Any financial gain by the Lessee as a result; and
- Heads of Terms that align to this Policy (including rent).

7.6.4 Where the Sub Lease or Sub Licence is on Community Land, the proposed use must be consistent with the Permitted Use in the Lease or Licence.

7.7 Keys and Security

7.7.1 Lessee's may change locks or install other security measures and these will constitute Improvements.

7.7.2 Where alternate security measures have been implemented by the Lessee, CN must be provided with access to the Premises (keys or security codes) in case of emergency. CN will make every effort to contact the Lessee in cases of emergency before entering the Premises.

7.8 Make Good

7.8.1 Any Improvements or Lessee's property must be removed and made good prior to the expiry of a Lease or Licence, except where the Lessor provides express consent otherwise, at their absolute discretion.

7.8.2 The Premises must be returned to its original condition at the commencement of the Lease or Licence, subject to fair wear and tear, except where the Lessor provides express consent otherwise, at their absolute discretion.

8 Other Conditions

8.1 Compliance

8.1.1 Lessee's of Council Property are expected to comply with the terms of their Lease or Licence. If a Lessee breaches the terms of a Lease or Licence, CN officers may serve a Breach Notice requiring rectification of the breach within a reasonable period or payment of compensation for the breach.

8.1.2 If a Lessee does not comply with a Breach Notice, or a notice to pay compensation, or if the Lessee continues to commit breaches of the Contract, CN reserves any and all its rights under the terms of the Lease or Licence, including termination of the Lease or Licence and re-entry of the Council Property.

8.1.3 Lessee's will also be required to comply with any Lessee and Licensee Code of Conduct that may be in place from time to time, and breach of Licensee Code of Conduct will be considered a breach of the Lease or Licence.

8.1.4 Delegation for termination of a contract will be in accordance with CN's Financial Delegations and the Instrument of Delegation to the Chief Executive Officer

adopted from time to time (Part C Policy Authorisations (Prepare, review and sign Legal Documents)).

8.2 Legal documentation

8.2.1 All Lessee's will be provided CN's standard Lease or Licence documentation which reflect this Policy.

8.2.2 Any conditions agreed between CN and the Lessee that are not consistent with this Policy will be agreed as variations to the standard Lease or Licence or included as special conditions.

8.3 Provision of and Requests for Information

8.3.1 When CN is determining the suitability of a Lessee for a Lease or Licence, it may require the Lessee's financial statements to undertake due diligence on the financial stability ability to service debt.

8.3.2 Wherever Lessee's pay any rent based on the Lessee's financial performance, CN will require a copy of their Annual Report including all financial statements.

8.3.3 Wherever CN requires any information in assessing or determining any proposal under this Policy, CN will make a Request for Information and the Lessee must comply with all reasonable requests.

8.4 Fees and Other Charges

8.4.1 All Lessee's will be required to pay application and administrative fees for various Council Property dealings.

8.4.2 Fees and charges include:

- Application Fee;
- Contract Administration Fee;
- Lease or Licence Variation Fee;
- Sub-Lease or Sub Licence Fee;
- Owner's Consent (including grant application support) Fee; and
- Public Notice of Lease or Licence Fee.

8.4.3 Each party will be responsible for their own legal costs, however, where there are significant legal representations required by CN as a result of complex terms and conditions, CN may require the Lessee be responsible for the payment of the 'reasonable' costs of CN in relation to the preparation of any legal documents.

8.5 Bank Guarantee

8.5.1 All Lessees, (excluding Community Groups that do not pay any turnover rent) must provide a Bank Guarantee equivalent to three months rent and outgoings.

8.5.2 Where CN has paid, incurred or suffered any loss in connection with a breach of the Lessee's obligations under this Lease or Licence, CN entitled to claim against the bank guarantee.

8.6 Approvals

- 8.6.1 Determination on whether any proposed Lease or Licence or Owner's Consent is either supported, supported in principle subject to Asset Advisory Committee endorsement or the proposal is not supported will be provided in accordance with **Part C - Roles and Responsibilities, CN Endorsement Process.**

Part C Roles and Responsibilities

9 CN Endorsement Process:

	Stakeholders	Recommendation	Endorsement of Recommendation	Asset Advisory Committee Endorsement/Recommendation	Document Execution
Strategic assessment of Council Property	Land Manager, Asset Custodian, Assets & Facilities, Community Planning, Property Services	Property Services (Level 4 or 5 Manager)	Corporate Services (Executive Director)	Required	N/A
Lease and Licence Heads of Agreement (issued in accordance with Table 1 and Table 2 of this Policy)	N/A	N/A	N/A	Required	Property Services (Level 4 or 5 Manager)
Lease and Licence Heads of Agreement (where CN receive unsolicited offers)	Land Manager, Asset Custodian, Assets & Facilities, Property Services	Property Services (Level 4 or 5 Manager)	Property Services, Finance Property & Performance, Corporate Services, CEO, dependant on contract value and in line with CN's Contract Policy and Financial Delegations	Where rent is being charged based on the Lessee's Financial Gain.	Property Services, Finance Property & Performance, Corporate Services, CEO, dependant on contract value and in line with CN's Contract Policy and Financial Delegations
Agreement for Lease, Funding Deed or Lease & Licence Contract (reflecting the executed Heads of Agreement)	N/A	N/A	N/A	N/A	Property Services, Finance Property & Performance, Corporate Services, CEO, dependant on contract value and in line with CN's Contract Policy and Financial Delegations
Owner's Consent where proposed Improvements do not include change of use or the façade of the Council Property, or any change to the Premises required.	Land Manager, Asset Custodian, Assets & Facilities, Property Services	Property Services (Level 4 or 5 Manager)	Property Services, Finance Property & Performance, Corporate Services, CEO, dependant on proposed Improvements value and in line with CN's Financial Delegations	Where the Lessee is seeking CN funding of the proposed Improvements	Property Services (Level 4 or 5 Manager)
Owner's Consent where proposed Improvements include change of use or the façade of the Council Property	Land Manager, Asset Custodian, Assets & Facilities, Property Services	Property Services (Level 4 or 5 Manager)	Corporate Services (Executive Director)	Required	Property Services (Level 4 or 5 Manager)

ANNEXURE A - DEFINITIONS

Additional Rent means any rent paid in addition to the Commencing Rent.

Agreement for Lease creates a binding obligation on both parties to enter into a Lease on agreed terms, subject to agreed conditions being completed.

Asset Advisory Committee is a confidential committee constituted to investigate, consider, and provide advice on strategic property asset issues.

Bookable Facility is a Council Property that is to be managed as a hireable space under a hire agreement and does not form part of the Lease or Licence arrangements under this Policy.

Breach Notice is any notice issued to a Lessee for a breach of the conditions of Lease or Licence, issued in accordance with section 129 of the Conveyancing Act.

CEO means Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative. References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

City of Newcastle (CN) means Newcastle City Council.

Commencing Rent is the rent determined at the commencement of a Lease or Licence, being the rent determined in accordance with this Policy, which may be different to the Market Rent.

Common Areas are the parts of the Council Property provided for common use of other users of the Council Property (including where applicable, the public), including access and egress roads, driveways and car parks within the property, entrances, exits and corridors and shared areas within the building/s.

CN Council Official means Advisory Committee member, other delegate of Council or contractors or consultants engaged by CN.

CN Staff means employees of CN (including full time, part time, fixed term and casual) or Specific Talent Lease or Licensor who is engaged under a CN position description.

Community Group see section 5.6 of this Policy.

Community Land means land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the Local Government Act (1993), for public purposes.

Council means the elected Council.

Councillor means a person elected to civic office as a member of the governing body including the Lord Mayor.

Council Property is Council owned or managed land and buildings, including a premises within a building. It does not include any improvements to land or CN assets that have been made previously by Lessee's under past or existing Lease or Licences

Crown Land Manager is the body responsible for the care, control and management of Crown reserves.

Emergency Services Organisation means an Emergency Services Organisation as defined in the State Emergency and Rescue Management Act

Financial gain is any revenue or income generated from a Council Property for the provision of goods and services commercially available.

Heads of Agreement is an initial, non-binding document that establishes the basic framework for a Lease or Licence.

Hire Agreement is an agreement between CN and users of a Bookable Facility for one off or recurring but sporadic use of the Bookable Facility.

Improvements are any works undertaken on Council Property by a Lessee including alterations, additions, replacements, renewals and upgrades, but excludes repairs and maintenance (and for the purposes of this Policy, includes a proposed change in use).

In-Kind Subsidy is the amount of Market Rent CN is foregoing evaluated against the Commencement Rent and Additional Rent.

Land means any CN owned or managed land classified as Operational, Community or Crown Land (where CN is the Crown Land Manager).

Lease grants a Tenant exclusive possession of a Council Property and gives the Lessee a proprietary interest in the Council Property which is binding on third parties. Under a Lease, a Lessee is able to assign or transfer its interest to a third party as the lease runs with the land.

Lessee means a person or Organisation that has entered into or is proposing to enter into, a Lease or Licence with Council for the use of Council Property. In this Policy, Lessee also includes any person or organisation that is currently occupying Council Property by way of any formal or informal agreement previously agreed to between CN and the person or organisation. Lessee includes the successors and permitted assigns of that person and includes, where relevant, its officers, agents, employees, representatives, contractors, licensees or invitees.

Lessee's Property means all fitout, fixtures, plant, equipment, services, partitions, alterations, articles and chattels of any kind that are located on, or brought into the Premises, by the Lessee, or in the Premises at the Lease or Licence commencement, not forming the Lessor's Property.

Lessor means CN.

Lessor's Property means all plant, equipment and chattels which are fixed to the Council Property which belong to the Lessor.

Licence is a Licence gives a Lessee a non-exclusive contractual right to occupy the licensed area and does not give a Lessee an interest in the licensed area but a right enforceable in contract only. Under a Licence the Lessee cannot assign or transfer to a third party. A Licence is applicable and specific to the Lessee named on the Licence only and can be revoked at any time.

Market Rent means the annual rent that can be reasonably expected to be paid in the open market for Council Property. The market rent is assessed by comparing Premises of comparable use and location in which advice will be sought by a qualified and registered valuer.

Not for Profit refers to a defined body with a legal entity that is incorporated under the NSW Corporations Act 1997 and/or registered under the Charitable Fundraising Act No 69, 1991 The Charity is Not Funded, Not for Profit and charitable purposes are for public benefit and must supply CN with a copy of their Constitution prior to entering into negotiations for a Lease or Licence.

Operational Land means land that is classified as operational land under Division 1 of Part 2 of Chapter 6 of the Local Government Act (1993), and is generally for operational purposes.

Organisation is a company that includes private companies, proprietary companies, unlisted and listed public companies, Not-For-Profit companies, incorporated associations and Government departments and corporations.

Owner's Consent is written approval for Lessee's to undertake improvements on Council Property and is granted for any regulatory consent if required and for the works.

Outgoings means the costs incurred by CN in the ongoing operation and maintenance of the land and buildings. They include but are not limited to air-conditioning and other plant, lighting and cleaning of common areas, security, landscaping, management, general repairs and maintenance costs, building insurance, public liability insurance, land tax and Council and water rates.

Permitted Use is the type of business or service that is permitted in the Premises and will align to the Council Property objectives, ensuring CN maintain control over the Council Property.

Plan of Management means a plan of management adopted by a council under Division 2 of Part 2 of Chapter 6 of the Local Government Act (1993).and in force in relation to an area of public land, and sets out the objectives and use of Community Land.

Premises is that part of CN's land or a building that are leased or licensed to the Lessee for the core operation of their organisation and will be delineated on a plan annexed to any Lease or Licence.

Rates and Taxes means any Government rates and charges, taxes and levies including the Fire Services Levy.

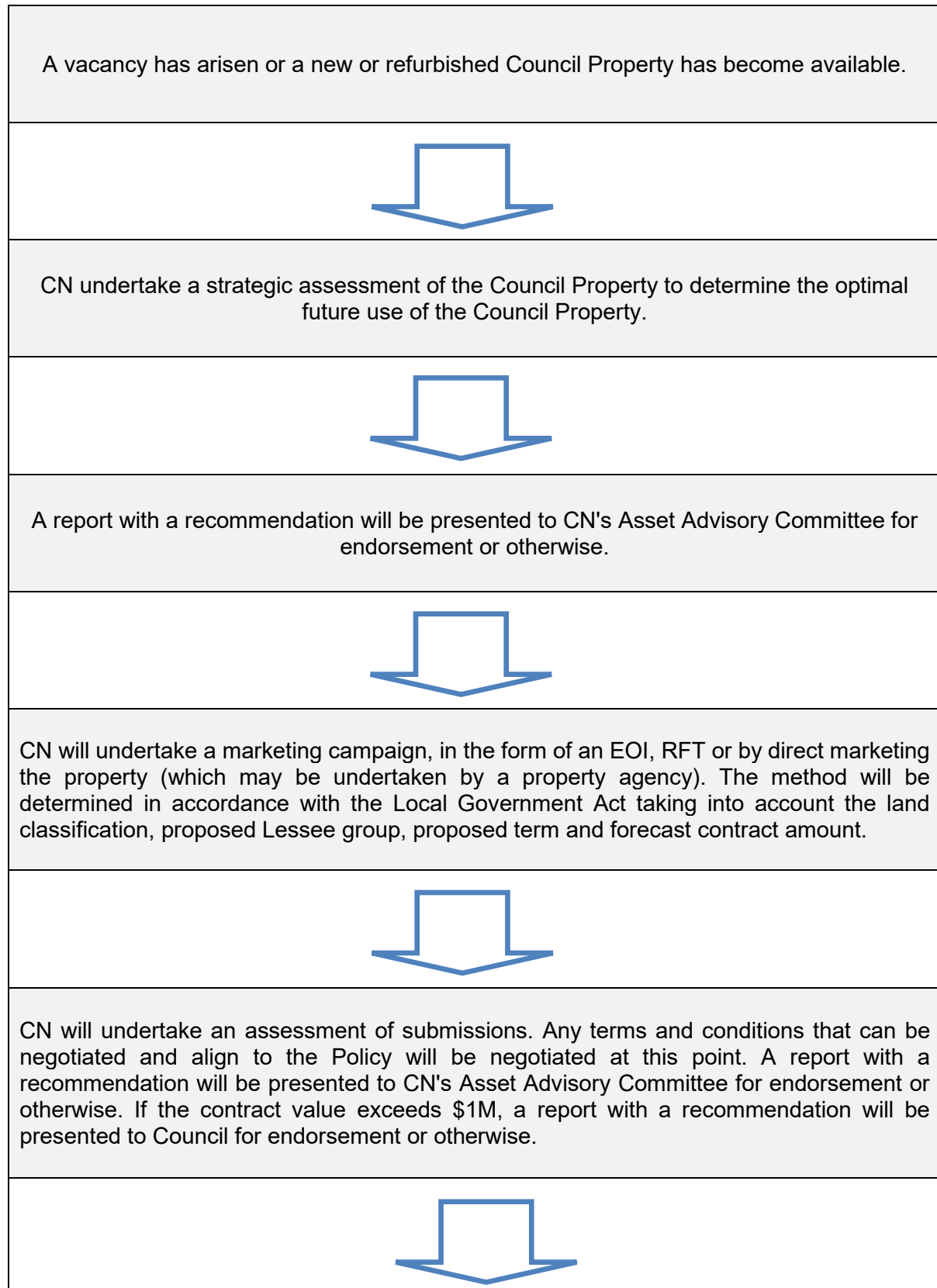
Services means the supply of all services and systems provided to the Premises or available for use including electricity, light, gas, oil, water, air conditioning, power, fuel, sewage, telephone services, cleaning, garbage removal, trade waste removal, and all other services furnished or supplied to the Premises.

ANNEXURE B - POLICY AUTHORISATIONS

In accordance with section 378 of the Local Government Act 1993, the Chief Executive Officer delegates the following functions to the positions listed:

Title of authorisation	Description of authorisation	Position Number and Title
Nil		

ANNEXURE C - PROCESS FOR LEASING AND LICENCING OF NEW OR VACANT COUNCIL PROPERTY



If supported by CN's Asset Advisory Committee and Council (if required), a Heads of Agreement will be issued for execution, including key terms for any Agreement for Lease or Licence, the Lease or Licence, and any Funding Deed.



If the Council Property is on Community Land (or Crown Land being managed as if it is Community Land), then the proposed Lease or Licence must be publicly notified and allow 28 days for submissions relating to support or objections for the proposal.



Council staff consider any submissions received during the notification period. If the proposed lease or licence term is over 5 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for consent, as required in the Local Government Act 1993.

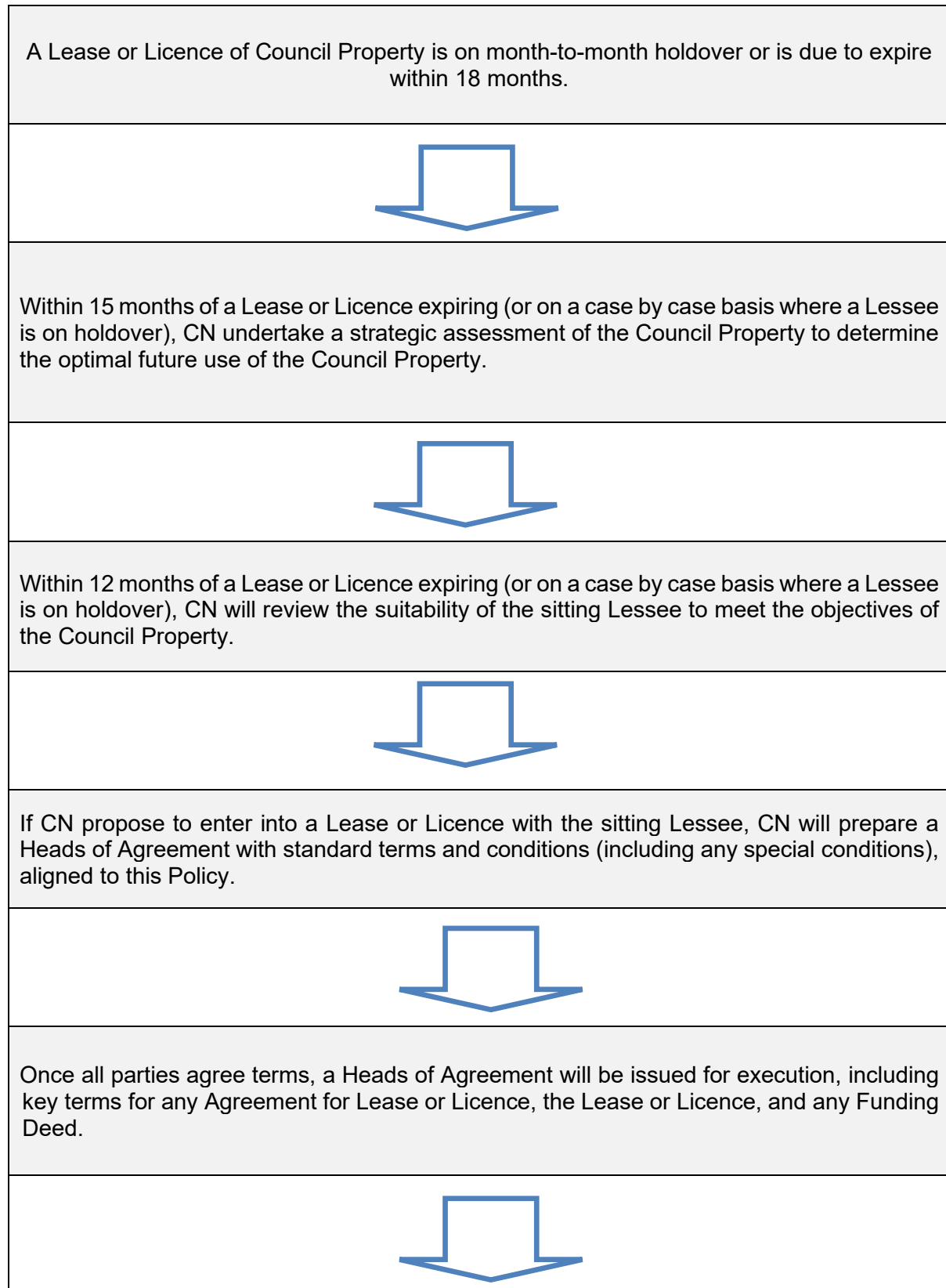


CN resolves objections, or where referred to the Minister, Minister's consent granted.



CN will issue Agreement for Lease or Licence, the Lease or Licence, and any Funding Deed for execution by all parties, noting the Lease or Licence will only be executed once any Funding Deed or Agreement for Lease conditions precedent are met.

ANNEXURE D - PROCESS FOR LEASING AND LICENCING OF COUNCIL PROPERTY TO SITTING LESSEE'S



If the Council Property is on Community Land (or Crown Land being managed as if it is Community Land), then the proposed Lease or Licence must be publicly notified and allow 28 days for submissions relating to support or objections for the proposal.



Council staff consider any submissions received during the notification period. If the proposed lease or licence term is over 5 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for consent, as required in the Local Government Act 1993.



CN resolves objections, or where referred to the Minister, Minister's consent granted.



CN will issue Agreement for Lease or Licence, the Lease or Licence, and any Funding Deed for execution by all parties, noting the Lease or Licence will only be executed once any Funding Deed or Agreement for Lease conditions precedent are met.

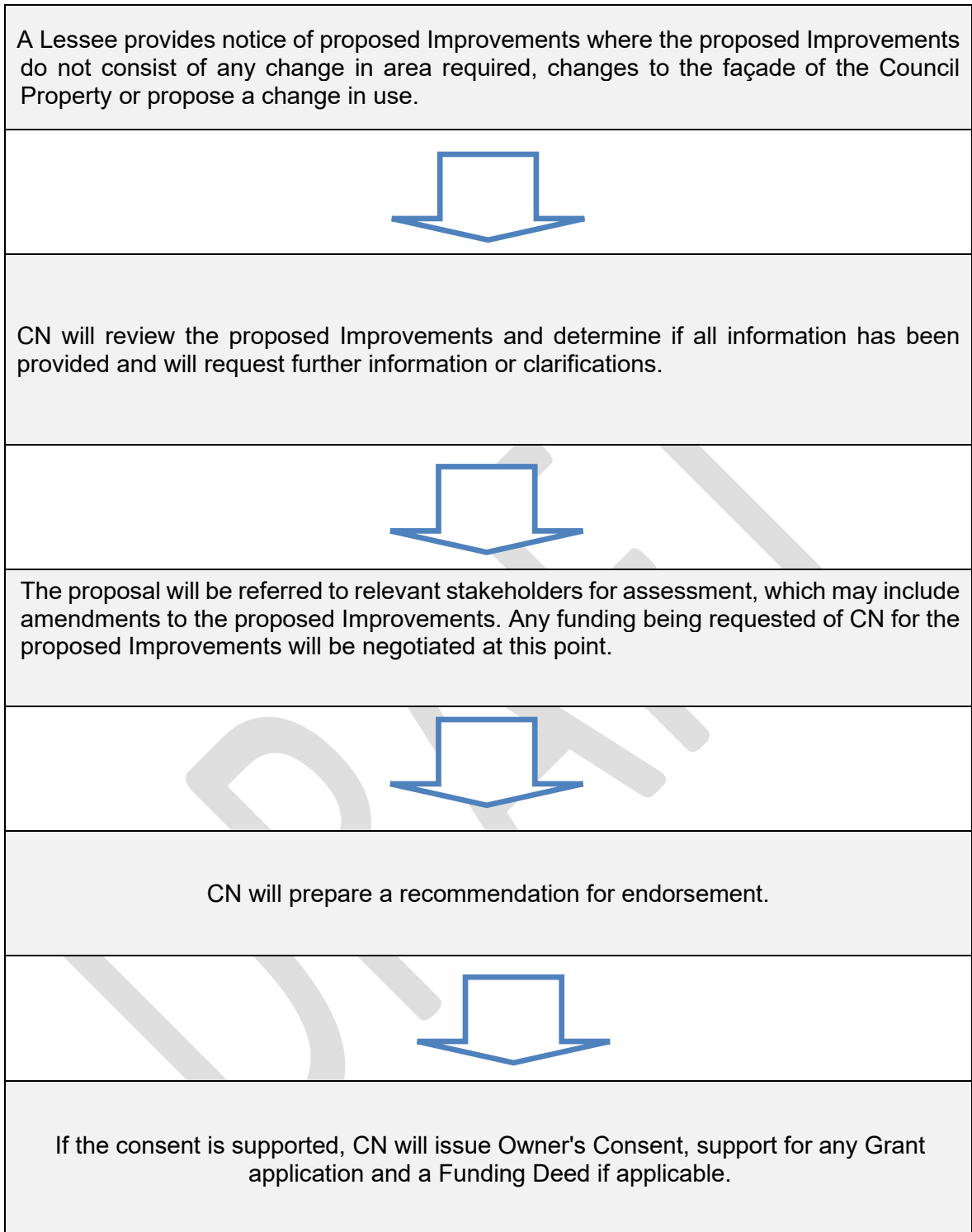
ANNEXURE E - LEASE AND LICENCE KEY TERMS

	Community Groups		Commercial Organisations	Emergency Services & Infrastructure Organisations				Short-Term Uses	
	Child Care Centres	Other Community Groups		SES	Other Emergency Services	Public Infrastructure	Private Infrastructure	Authorities	Private individuals or organisations
Term	5 years	Up to 5 years	Case by case, based on market and Lessee requirement	Up to 21 years	5 years	Case by case, based on market and Lessee requirement	Case by case, based on market and Lessee requirement	As required	As required
Option	5 years, exercised by mutual agreement	Nil	Case by case, based on market and Lessee requirement	Nil	5 years	Case by case, based on market and Lessee requirement	Case by case, based on market and Lessee requirement	Nil	Nil
Market Rent Assessment	Market value (comparable permissible commercial uses)	5% of land value for Leases and Licences of land, 7% of land value for Leases or Licences including part or all of a building asset	Market value (comparable permissible commercial uses)	Market value (comparable permissible commercial uses)	Market value (comparable permissible commercial uses)	Market value (comparable permissible commercial uses)	Market value (comparable permissible commercial uses)	Nil	Nil
Commencing Rent	3.25% of previous 3 years FY turnover (being the most recent 3 FY's prior to the Lease or Licence negotiations)	Minimum Crown Land Rent published in the quarter prior to the Lease or Licence commencement date	Market Rent	\$1	Market Rent	\$1	Market Rent	Minimum Crown Land Rent published in the quarter prior to the Lease or Licence commencement date	The then current CN Fees and Charges
Additional Rent	Turnover Rent, 3.25% of annual turnover	Reviewed on a case by case basis commensurate to any proposed Financial Gain	Case by case, based on market and Lessee requirement	Nil	Nil	Nil	Nil	Nil	Nil
Rent Reviews	Commencing Base rent reviewed to 3.25% of previous years turnover, however, base rent not to reduce below the Commencing Rent	Commencing rent annually 3%	Case by case, based on market and forecast impacts on future Rent	Not applicable	Annually 3%, Market Rent every 5 years	Annually 3%, Market Rent every 5 years	Annually 3%, Market Rent every 5 years	Nil	Annually, reviewed to the then current CN Fees and Charges







ANNEXURE F - LEASE AND LICENCE ROLES AND RESPONSIBILITIES





	Category 1						Category 2						Category 3						Category 4					
	Ground Lease		Land & Premises		Premises Only		Ground Lease		Land & Premises		Premises Only		Ground Lease		Land & Premises		Premises Only		Ground Lease		Land & Premises		Premises Only	
	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee	CN	Lessee
Building Insurance		✓	✓		✓		✓	✓		✓		✓	✓		✓		✓		✓	✓		✓		✓
Contents Insurance		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Public Liability Insurance		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Council and Water Rates (only payable if charged through Outgoings)		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Fire Safety Compliance		✓	✓		✓		✓	✓		✓		✓		✓	✓		✓		✓	✓		✓		✓
Land tax levied by authorities		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Maintaining Plant & Equipment (where serving multiple Premises and Common Areas)		✓	✓		✓		✓	✓		✓		✓		✓	✓		✓		✓	✓		✓		✓
Maintaining Plant & Equipment (where serving the Lessee's Premises only)		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Service Connections and Usage (where separately metered)		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Commercial Waste Services		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Trade Wastewater Services		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Cleaning		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Graffiti removal		✓	✓		✓		✓	✓		✓		✓		✓	✓		✓		✓	✓		✓		✓
Grounds Maintenance (including trees up to 3M)		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Gutter Clearing		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Pest Control		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Termite Control		✓	✓		✓		✓	✓		✓		✓		✓	✓		✓		✓	✓		✓		✓
Security		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Repairs and Maintenance		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓
Capital and Structural Works (excluding any Improvements constructed by Lessee)		✓	✓		✓		✓	✓		✓		✓		✓	✓		✓		✓	✓		✓		✓
Makegood and Vacant Possession		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓		✓

ANNEXURE G - OWNERS CONSENT PROCESS



ANNEXURE H - CHANGES TO PREMISES REQUIRED, FACADE AND PERMITTED USE

<p><i>Proposed Improvements include a change to the required Premises or Change in Use.</i></p>	<p><i>Proposed Improvements include changes to the Council Property façade.</i></p>
	
<p>CN undertake a strategic assessment of the Council Property to determine the optimal future use of the Council Property and if a new Lease or Licence (or variation to existing Lease or Licence) will be considered that support's Owner's Consent</p>	<p>CN will review the proposed Improvements and determine if all information has been provided and will request further information or clarifications.</p>
	
<p>Any terms and conditions that can be negotiated and align to the Policy will be negotiated at this point. A report with a recommendation will be presented to CN's Asset Advisory Committee for endorsement or otherwise. If the contract value exceeds \$1M, a report with a recommendation will be presented to Council for endorsement or otherwise.</p>	<p>The proposal will be referred to relevant stakeholders for assessment, which may include amendments to the proposed Improvements. Any funding being requested of CN for the proposed Improvements will be negotiated at this point.</p>
	

<p>Once endorsed by CN's Asset Advisory Committee and Council (if required), a Heads of Agreement will be issued for execution, including key terms for any Agreement for Lease or Licence, the Lease or Licence, and any Funding Deed.</p>	<p>A report with a recommendation will be presented to CN's Asset Advisory Committee for endorsement or otherwise.</p>
	
<p>If the Council Property is on Community Land (or Crown Land being managed as if it is Community Land), then the proposed Lease or Licence must be publicly notified and allow 28 days for submissions relating to support or objections for the proposal.</p>	<p>If the consent is supported, CN will issue Owner's Consent, support for any Grant application and a Funding Deed if applicable.</p>
	
<p>Council staff consider any submissions received during the notification period. If the proposed lease or licence term is over 5 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for consent, as required in the Local Government Act 1993.</p>	
	

CN resolves objections, or where referred to the Minister, Minister's consent granted.



CN will issue Agreement for Lease or Licence, the Lease or Licence, and any Funding Deed for execution by all parties, noting the Lease or Licence will only be executed once any Funding Deed or Agreement for Lease conditions precedent are met.

ANNEXURE I - SAMPLE CONDITIONS OF CONSENT

CorporateServices Author Initials
Reference: LXX XXX/XXX
Phone: 02 4974 2xxx



Name
Company
Postal Address
SUBURB STATE POST CODE

By email:

Dear xxx

**LEASE TO XXXX
ADDRESS
OWNER'S CONSENT FOR PROPOSED IMPROVEMENTS**

We refer to your recent request for Owner's Consent for proposed alterations and additions (Improvements) in accordance with the plan entitled "XXX" and attached to your email of DD MM YYYY.

The Lessor hereby provides consent for the proposed improvements subject to the Lessee:

1. Submitting professionally drawn plans, specifications and samples of finishes for the proposed Improvements.
2. Submitting copies of all statutory consents and approvals required by law in respect of the proposed Improvements, including conditions, prior to commencing work.
3. As a result of the Improvements, addressing any redirection of surface/ground water and resulting sediment transported onto an adjoining property, and ensuring that any existing stormwater system on the property will adequately address any increased loads.
4. Ensuring the Improvements are done in a workmanlike manner.
5. Ensuring the Improvements are done in accordance with any plans, specifications and schedule of finishes.
6. Ensuring the Improvements are done in accordance with all statutory consents, approvals and laws and the requirements of authorities.
7. Submitting works as executed drawings of all Improvements done, within a reasonable time after completion of the work.
8. If applicable, submitting a copy of an Occupation Certificate on completion of the Improvements.
9. Ensuring the Improvements are maintained in accordance with the terms of the Lease.
10. If required by the Lessor, removing the Improvements and reinstating the Premises to its condition prior to the Improvements being carried out on expiry or termination of the Lease.

Further, the Lessor will not be committing any funds to the proposed Improvements and will not be responsible for any repairs or maintenance of the Improvements except to the extent that the terms and conditions of the Lease require.

Should you require any further information on this matter please contact <<Officers name>>, <<Title>> on 49XX XXXX.

Yours faithfully

DOCUMENT CONTROL

Policy title	Council Property Lease and Licence Policy
Policy owner	Executive Director Corporate Services / Executive Manager Finance Property and Performance
Policy expert/writer	Property Services Manager
Associated Guideline or Procedure Title	Insert 'Nil' if not applicable
Guideline or Procedure owner	Executive Director Corporate Services / Executive Manager Finance Property and Performance
Prepared by	Finance Property and Performance
Approved by	Choose an item.
Date approved	Insert either Council meeting date or CEO approval date
Commencement Date	Insert same date as above
Next review date	Within the first 12 months of the new Council term <i>(Or if CEO approved, insert three years from CEO approval date – delete this comment)</i>
Termination date	One year past the review date
Version #	Version number x <i>(versions mean adopted versions only)</i>
Category	Council (and Crown) Land and Facilities
Details of previous versions	Version 1 – ECM:
Keywords	*Insert words that will help users find this document using the search function*
Relevant Newcastle 2040 Theme/s	Liveable Creative Achieving Together
Relevant legislation/codes (reference specific sections)	This Policy supports CN's compliance with the following legislation: – Relevant Legislation / Codes that affect this Policy If none, insert 'Nil'.
Other related documents	Insert Related policies, documents and strategies if applicable In none, insert 'Nil'.
Related forms	Insert Related forms In none, insert 'Nil'.
Required on website	Yes/No
Authorisations	Functions authorised under this Policy at Annexure B

ATTACHMENT B - Submission Feedback and Resolutions

Draft Policy Submission Feedback	CN Response
1. Clause 3.3 – should inland swimming pools be added to this list?	Added as suggested.
2. Clause 4.4.4 – do we have any permanent leases currently? I had assumed that all our leases have an end date?	This refers to Clause 5.4.4. We do not have any permanent leases. Reworded to reflect 24/7 use as opposed to perpetuity, all leases have an end term and the word permanent removed.
3. Clause 5.4.11 – I do not support this clause. Hypothecating rental fees to a sinking fund for each individual property is administratively complex, would lead to very small sums of money being collected that are difficult to spend, and not consistent with our Future Fund approach. If hypothecation is required, I'd suggest aggregation into one of our existing Internal Restricted Reserves.	Reworded to reflect "a suitable Internal Restricted Reserve".
4. Clause 6.2.7 – this is different again to Clause 5.4.11, hypothecating Additional Rent to a sinking fund for works on all Council Property. Again, the Future Funds intention is to raise revenue to support all CN operations, not just property.	Reworded to clarify that this is only for bookable facility fees, and fees will be distributed to "a suitable Internal Restricted Reserve".
5. Clause 5.6.4 – does this prohibit CN being able to enter an arrangement with a Community Housing Provider for social housing (below market rent)? This is at odds with other CN strategies.	Any future proposed agreement between a CHP and CN will require approval through Asset Advisory Committee and possibly Council. The delivery model will be complex and CHP's will be excluded from the Policy, as unique conditions will be structured which are yet to be determined.
6. Clause 5.6.5 – the inclusion of the term "public purpose" could be problematic. I can see Telstra/Optus arguing for discounts on rent for a telecommunications tower on the basis of this clause, as mobile reception is a 'public purpose'.	Reworded to include, "for the avoidance of doubt, Telecommunication infrastructure will be considered as a commercial operation and commercial market fundamentals will prevail.
7. Clause 7.3.7 – this clause needs a slight redraft. As it is currently written, we will offer no protection to private IP, taking a third-party's idea and then running a full Lease process (including EOI and tender). I understand that the intent is about re-assessing rent and other terms, but this needs to be rephrased to narrow the focus.	Clause deleted, it was a duplication of a similar clause that is clear on a process and any tenants proposals are exclusive to their request as a sitting tenant.

<p>8. Clause 7.8 – do we want improvements to be removed in all circumstances? It might be beneficial to adjust the wording to require removal except with express consent with CN. For example, the Clause 7.7 immediately above refers to security systems as being an Improvement. Do we really need lessees removing security features when they vacate?</p>	<p>Reworded to include, "except where the Lessor provides express consent otherwise, at their absolute discretion".</p>
<p>9. Clause 8.1.3 – I appreciate the inclusion of the Code of Conduct, but how will this be actioned? Is there a version of the code that is suitable for lessees? Many of the Code's clauses are not relevant to external parties (how would a lessee disclose their interests, or a gift, or avoid binding caucus votes?).</p>	<p>Reworded to clarify that there may be a "Lessee and Licensee Code of Conduct" in place from time to time. CN to develop this specifically for Lessees and Licensees.</p>
<p>10. Add Clause 7.3.12 – suggest adding a new clause to close this section, confirming that Owners Consent does not limit CN's statutory obligations under the EP&A Act to undertake a merit-based assessment of any resulting development application.</p>	<p>Added as suggested.</p>
<p>11. Childcare Centres to have 10 year term.</p>	<p>The Policy already allows for a 5 year term and 5 year option, by mutual agreement.</p>
<p>12. Fees and Charges proposed under the Policy should be waived for Childcare Centres as the improvements they make benefit CN's asset.</p>	<p>Lessee's will be responsible to make good Improvements, at CN's discretion, and they may not have any value to CN for any future use of the Property. However, there are already methods for claiming Fee Waiver's which, being a Not for Profit, Childcare Centres may be able to apply for through the existing system.</p>