

## **8.7. Rent relief to Council tenants due to COVID-19 lockdown**

**AUTHOR:** Albert Lo, Manager Property Assets

**ENDORSED BY:** Duncan Mitchell, Director Engineering and Property Services

**ATTACHMENTS:**

1. Letter To Council's Tenants - Covid Rent Relief [8.7.1 - 2 pages]

**PURPOSE:**

This report is to update Council on the latest Rent Relief Package that has been offered to Council tenants due to the impacts that the COVID-19 Public Health Orders have had on their business.

**EXECUTIVE SUMMARY:**

Since the start of the COVID-19 Pandemic Crisis in March 2020, North Sydney Council has come to the aid of its commercial tenants, in particular café and restaurant owners with the introduction of Council's Waiving Charges During Novel Coronavirus (COVID-19) Policy (D5-49) which was introduced on 25 March 2020. This Policy was designed to address the financial hardship for several lease and license holders in Council's Property Portfolio because of the Federal Government mandated restrictions which forced businesses to close on 20 March 2020. Council's Waiving Charges During Novel Coronavirus (COVID-19) Policy was phased out in November 2020 when Council adopted the National Cabinet Mandatory Code of Conduct – Small to Medium Enterprise (SME) Commercial Leasing Principles During COVID-19 and the NSW governments "Retail and Other Commercial Leases (COVID-19) Regulation 2020.

Now that the new COVID-19 Delta strain outbreak has again required State and Federal Government intervention through the introduction of strict Public Health Orders which have forced businesses to close, Council is again responding to a number of requests for Rent Relief from its commercial tenants. These latest Health Orders which came into effect on 26 June 2021 have either forced some businesses to partially close or significantly reduce their ability to operate, café and restaurant businesses are impacted the most.

It is recognised that in the short term this package will reduce Councils Revenue in the Property Portfolio, however the overall objective of this package is to ensure that Councils tenants will not face prolonged financial hardship that may cause them to close and vacate the premises they lease from Council increasing Councils overall vacancy rate in what is currently a very weak commercial leasing market.

This report is updating Council on what has been offered to Councils commercial tenants in the latest Rent Relief Package and to also inform Council that the Mayor and General Manager have used their delegation of authority adopted by Council on 4 December 2017 to authorise

the Rent Relief Package. The approach is consistent with National Cabinet's Mandatory Code, previously adopted by Council.

**FINANCIAL IMPLICATIONS:**

The forecast revenue forgone through Councils latest Rent Relief Package being offered to its Commercial tenants is expected to be approximately \$107,000 per month. The Rent Relief package being offered is in the form of a rental waiver based on the percentage loss (%) in businesses revenue since the latest government lock down orders came into place on 26 June 2021. For the 6-month period, the total financial support package provided by Council will likely reduce the rental revenue in Councils Property Portfolio by \$642,000.

**RECOMMENDATION:**

- 1. THAT** the report be received.

## **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

### 2. Our Built Infrastructure

#### 2.1 Infrastructure and assets meet community needs

### 3. Our Future Planning

#### 3.1 Prosperous and vibrant economy

## **BACKGROUND**

Since the start of the most recent pandemic in June 2021, North Sydney Council has received several requests for Rent Relief from its commercial tenants because of the current COVID-19 pandemic Health Orders. These Health Orders have either forced some business to close or significantly reduce their ability to operate.

In March 2020 during the first pandemic and subsequent Public Health Orders, North Sydney Council also came to the aid of its tenants and local businesses who had leases with Council with the introduction of Council's Waiving Charges During Novel Coronavirus (COVID-19) Policy (D5-49) which was introduced on 25 March 2020. This Policy was designed to address the financial hardship for several lease and license holders in Council's Property Portfolio because of the Federal Government mandated restrictions which forced businesses to close on 20 March 2020.

The Policy was phased out in November 2020 when a report was brought to Council recommending that Council adopt the *National Cabinet Mandatory Code of Conduct – Small to Medium Enterprise (SME) Commercial Leasing Principles During COVID-19* and the NSW Government's *"Retail and Other Commercial Leases (COVID-19) Regulation 2020"*. This Regulation commenced on 24 April 2020 when it was published on the NSW legislation website and initially ended after 6 months on 24 October 2020. The Regulation 2020 was subsequently extended to 31/12/2020 for Commercial leases and further to 31/3/2021 for Retail leases only.

By adopting this approach Council's policy became superseded by the National Code of Conduct and the NSW government's *"Retail and Other Commercial Leases (COVID-19) Regulation 2020"*.

It was considered prudent and logical for Council to now adopt this approach as it ensured consistency with the State and Federal Codes and Regulations.

Now that the second pandemic, via the "Delta strain" of the COVID-19 virus has created a significant health crisis, that has required much tougher lockdown measures since the first pandemic, the Mayor and General Manager have used the delegation of authority adopted by Council on 4 December 2017 which provides that the Mayor is delegated to deal, in cases

of emergency, with any matter not precluded by Section 377 of the Local Government Act 1993 and not being otherwise delegated or development / building applications.

Section 226 of the Local Government Act provides that it is the role of the Mayor:  
(d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council.

It is a requirement that all matters dealt with under delegation to the Mayor shall be reported to the next available meeting of the Council. The delegation exercised by the Mayor includes:

- Rent relief to Council tenants seriously affected by the COVID-19 lockdown

## **CONSULTATION REQUIREMENTS**

Community engagement is not required.

## **DETAIL**

With the new Delta strain of the COVID-19 virus being transmitted in the Sydney community in June 2021, the NSW Government announced lockdown to the whole Sydney metropolitan area from 26 June 2021. Non-essential retail businesses will have to close, and food premises can only do takeaway and delivery.

### **Retail and other Council tenants**

The Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2021 was gazetted on 13 August 2021 and took effect from 13 July 2021 to 13 January 2022 (a period of 6 months). The Amendment Regulation 2021 re-introduced the National Code of Leasing principles in which Landlords will provide rental relief to impacted lessee.

Under the Amendment Regulation 2021 an impacted lessee is defined as the lessee qualifies for 1 or more of the following:

- 2021 COVID-19 Business Grant / Micro-business Grant,
- 2021 JobSaver Payment

To qualify for the above grant or payment, the business must suffer a drop in turnover of more than 30% during the lockdown period, compared to a corresponding period in 2019 or a similar period during pre-lockdown.

### **The National Code of Conduct:**

The National Code of Conduct 2020 re-introduced in the Regulation provided various leasing principles including the following main ones:

- Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period
- Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement negotiated under the Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under this Code
- Landlords must not draw on a tenant’s security for the non-payment of rent during the period of COVID-19 pandemic
- Landlords and tenants will negotiate in good faith on temporary leasing arrangements
- Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals, based on the reduction in the tenant’s trade income during COVID-19 pandemic period
- Rental waivers must constitute no less than 50% of the total reduction in rent with the remaining in rent deferral

Council will apply the National Code of Conduct in relation to financial support. The approach approved by the Mayor and General Manager provides an increase to the portion of rent waived above the 50% minimum, to lessees that have significant drop in turnover as follows:

<b>National Code of Conduct</b>	<b>Rental Waiver</b>	<b>Rental Deferral</b>
<b><i>Minimum requirement of the Code</i></b> Turnover loss >30% to 100%	50% turnover loss	50% turnover loss
<b><i>NSC enhanced package</i></b> Turnover loss >30% to 50% >50% to 70% >70% to 99% =100% Shop closed completely	50% turnover loss 70% turnover loss 90% turnover loss 100%	50% turnover loss 30% turnover loss 10% turnover loss 0%

In circumstances where a business has completely closed and is not trading at all due to impacts of COVID-19, Council will provide a full waiver of rent for the duration of the closure providing the tenant agrees to extend their lease for the same period that the waiver is given. It is however not envisaged that the scenario of “shop closed completely” will apply to many lessees.

The logic behind the offering of additional rent waiver is ensuring that we get as many as our tenants back at the end of the lockdown as possible - it is not in our interest for them to go under and not continue post the lockdown.

To implement the Rent relief, Council lessees will need to provide their Business Activity Statement (BAS) of Q1 in financial year 2021/22 (July to September 2021) and compare with the BAS of a corresponding period in 2019 or a similar pre-lockdown period in 2021. Council’s Property Consultant Colliers International will work out the drop in turnover from the BAS submitted and prepare Rent Relief letters for Council GM’s approval.

The rent relief package will be backdated to 1 July 2021 and will be effective from July until the expiry of The Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2021.

Councils Property Management Agents – Colliers International have since sent a letter out to all relevant Council tenants on 9 September 2021 notifying them of this decision. Colliers' letter is attached with this Report for reference. This was also reported in the Councillor bulletin on 16 September 2021.

This rental relief proposal will apply to the following category of tenants that will suffer a turnover loss of more than 30%:

- Retail lessees (eg Restaurants & cafés, Newsagency)
- Commercial lessees (eg Business School, Educational Organisation)
- Recreational lessees (eg Basketball Association, Tennis Club)
- Community lessees (eg Kidsnest)

This rental relief proposal will however not apply to the following type of leases:

- Residential lease
- Land and Road lease

The rent relief provided as a rental waiver for Council tenants is expected to be about \$107,000 per month. For the 6-month period, the total financial support package provided by Council will reduce the rental revenue by \$642,000.

North Sydney Council's current Rent Relief Package to its commercial tenants is in response to a number of enquiries Councils Property Management Agents Colliers International have had to provide rent relief since the new Public Health Orders came into place on 26 June 2021.

It is recognised that in the short term this package will reduce Council's Revenue in the Property Portfolio, however the overall objective of this package is to ensure that once the latest lockdown orders are lifted, those tenants in Councils Property Portfolio will be able to return to normal business as soon as possible. The Rent Relief Package will ensure that Councils' tenants will not face prolonged financial hardship that may cause them to close and vacate the premises they lease from Council.

**Attachment 8.7.1 Letter To Council's Tenants - Covid Rent Relief**

Level 42, Northpoint 100  
Miller Street  
North Sydney, NSW 2060  
Australia

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Mobile: +61 403 810 260



Colliers International (NSW) Pty Limited

9 September 2021

To Council's Tenant  
Re: Covid Rent Relief

Dear Tenant

North Sydney Council understands that the current COVID-19 outbreak and the accompanying restrictions that have been put in place by the State Government through the Public Health Orders is having a significant impact on the operation of your business.

North Sydney Council would like to reiterate to all tenants that Council is following the National Code of Conduct which was made mandatory in the recent Retail and Commercial Leases Covid-19 Amendment Regulations 2021.

The National Code of Conduct enables a lessee to apply for rent relief from the lessor (landlord) based on a drop in turnover (minimum of 30%) in the first quarter of 2021/22 i.e. July to September 2021 (compared with a corresponding period in 2019 or a similar quarterly period before lockdown in 2021).

For more information about the rent relief under the National Code of Conduct please go to the following website:

<https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>

North Sydney Council under the delegation of the Mayor and General Manager has adopted a rent relief package which is better than the minimum rates specified in the National Code. Refer to the table below which outlines the additional rent abatement (waiver), that Council is offering to lessees that have had a significant drop in turnover since July 1. Details of the proposal are as follows:

<b>National Code of Conduct</b>	<b>Rental Waiver</b>	<b>Rental Deferral</b>
<b>Minimum requirement of the Code</b>		
Turnover loss >30% to 100%	50% turnover loss	50% turnover loss
<b>NSC enhanced package</b>		
Turnover loss >30% to 50%	<b>50% turnover loss</b>	<b>50% turnover loss</b>
>51% to 70%	<b>70% turnover loss</b>	<b>30% turnover loss</b>
>71% to 99%	<b>90% turnover loss</b>	<b>10% turnover loss</b>
=100% Shop closed completely	<b>100%</b>	<b>0%</b>

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As an example of the above, if a tenant paying \$1000 rental per month can demonstrate a drop in turnover of 60% for the September quarter, then 40% of their normal rental would be due and payable (\$400 per month), council will waive 70% of the remaining rent (\$420 per month) and 30% of the remainder would be deferred for later repayment (\$180 per month).

In circumstances where a business has completely closed and is not trading at all due to impacts of COVID-19 Council will provide a full waiver of rent for the duration of the closure providing the tenant agrees to extend their lease for the same period that the waiver is given.

Please note as outlined in the National Code of Conduct - Leasing Principles No.2, Tenants must remain committed to the terms of their lease, subject to any amendments negotiated to their rental agreement. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under the National Code.

This rental relief proposal will apply to the following category of tenants that have had a turnover loss of more than 30%:

- Retail lessees (eg Restaurants & cafés, Newsagency)
- Commercial lessees (eg Business School, Educational Organisation)
- Recreational lessees (eg Basketball Association, Tennis Club)
- Community lessees (eg Kidsnest)

The commencement date of Council's Relief Package is backdated to 1 July 2021.

Tenants who want to apply for rent relief must submit to Colliers their ATO lodged Business Activity Statement (BAS) for July to September 2021 and the comparison BAS in a corresponding period in 2019, together with evidence that they are an "impacted lessee" as defined under the Retail and Commercial Leases Covid-19 Amendment Regulations 2021 who qualifies for 1 or more of the following:

- 2021 COVID-19 Business Grant / Micro-business Grant,
- 2021 JobSaver Payment

Tenants are expected to self-assess their drop in turnover and continue making monthly payments towards the rent where applicable until they are able to provide the quarterly BAS statement for consideration.

For any enquiries, please contact Tim Dryden of Colliers by email [Tim.Dryden@colliers.com](mailto:Tim.Dryden@colliers.com) or by phone +61 403 810 260.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Dryden".

Tim Dryden  
Property Manager | Real Estate Management

Accelerating success.