

**4.5: REVIEW OF DELEGATION FOR LEASE AND LICENCE
ADMINISTRATION FUNCTIONS**

Attachments : Revised Delegation Relating to Leases and Licences
Responsible Officer(s) : Executive Director Corporate Services (G Adams)

IN BRIEF

- Council is requested to consider the review of the leases and licences delegation tasks, with the view to adopting the revised delegation. The revised delegation will improve clarity and increase the efficiency with which leasing administration matters are handled.

**ITEM 4.5: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

THAT the revised delegation relative to the City's Leases and Licences Administration functions as attached to this item be ADOPTED.

BACKGROUND

1. Under the provisions of the *Local Government Act 1995*, a local authority may delegate some of its powers and duties to the Chief Executive Officer to help facilitate the services it provides to the community.
2. The City maintains a Register of Delegations. These delegations are reviewed annually and Council last considered this review at its meeting held on 18 September 2012, where the revised Register of Delegations was adopted.
3. The City currently has over 140 delegations and while the annual review considers the relevance and operation of each delegation, it does not have the scope for a detailed review relative to legislative change and the effectiveness of individual functions of the City.
4. All new lease and licence requests are referred to Council for determination. To date, any request to vary or surrender a lease, for whatever reason is also referred to Council for determination.
5. In September 2012 Council adopted the Property Management – Leases and Licences Policy which provides the guiding principles under which Council manages leases and licences. With improved practices and knowledge, it is now proposed to modify and enhance the delegation relating to leases and licences tasks.
6. The review of the delegations relative to lease and licence matters has been considered against the relevant legislation, including the *Local Government Act 1995* and the *Land Administration Act 1997*, to ensure consistency and correctness with the legislative powers of these Acts.

DISCUSSION

7. The management of leases and licences encompasses a variety of matters, including assessing all requests, advising principle terms that will form part of the agreement, ensuring all relevant approvals are obtained, compliance with legislative requirements and ongoing fulfilment of lease obligations including payment of rent, during the term of the agreement.
8. The City currently has one delegation for leasing matters, however it is currently unclear whether a variation to lease for whatever reason requires a decision of Council or can be managed at an administrative level.
9. It is also proposed to introduce authority to initiate the ability to renegotiate market rent should a lessee dispute the increase in rent and surrender a lease.
10. The summary of proposed changes to the delegation in detail, as follows:
 - a. **Delegation:** Matters relating to Leases and Licences

Function: This delegation grants authority to process requests relating leases and licences, pursuant to with section 3.58 of the *Local Government Act 1995* and Part 6 of the *Land Administration Act 1997*.

Proposed Modifications:

- A change to the name of this delegation is proposed to reflect its expanded function.
- The delegation has been expanded to allow for variation to a current lease where it does not propose to alter the principle terms resolved by Council. New leases and licences will continue to be referred to Council for determination.
- New authority is proposed to allow the ability to renegotiate rent should a lessee dispute the increase in market rent subject to following conditions:
 - a. the lessee providing to the City at the lessee's cost, a written rental valuation undertaken by a licensed Valuer on or prior to the date upon which the increased rent is to apply; and
 - b. the City and the lessee reaching agreement on a new lease/licence rental that is not less than 80% of the market rate as determined by the City's Valuer up to a maximum amount of \$5,000 per annum.This eliminates the need for Council to consider an item twice as Council will have resolved to enter into a lease agreement including rental terms.
- New authority to initiate and conclude a surrender of lease or licence of any property where the balance of lease/licence payable does not exceed \$10,000. This amount being in line with delegation for 'Write off of Monies Owing' sub-delegated to the Executive Director Corporate Services.
- This delegation has been sub-delegated to the Senior Property Officer and Executive Director Corporate Services. It is proposed to remove reference to the Senior Property Officer for consistency with other delegation levels. The Executive Director Corporate Services to remain as sub-delegate.

- To re-word the delegation to clearly specify the matters addressed under section 3.58 of the *Local Government Act 1995* and Part 6 of the *Land Administration Act 1997* that may be considered under delegation and those which must be presented to Council for determination.
11. The revised delegation provides clarity in how to apply the delegation which will improve the day to day management of leases and licences.
 12. The revised delegation has been considered in accordance with Council Property Management – Leases and Licences Policy adopted in 2012.

GOVERNMENT CONSULTATION

13. This matter has not been referred to any government agency for comment, as it relates to the City's internal processes only.

PUBLIC CONSULTATION / ENGAGEMENT

14. There is no requirement for this matter to be advertised for public comment.

STATUTORY IMPLICATIONS

15. Section 18 of the *Land Administration Act 1997* states that a person shall not deal with interest on Crown land or lease or licence Crown land without prior approval of the Minister for Lands.
16. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased property.
17. Section 5.42 of the *Local Government Act 1995* enables the delegation of some powers and duties to the Chief Executive Officer.
18. Section 9.10 of the *Local Government Act 1995* allows the appointment of persons or classes of persons to be authorised for the purpose of performing particular functions.

STRATEGIC IMPLICATIONS

19. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021).

Key Focus Area

Organisational Performance

Community Priority

Policy and Procedures

Proposed Strategies

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

POLICY IMPLICATIONS

20. Section 2.7(2) of the Local Government Act 1995 defines the role of Council to determine local government's policies.
21. The review of the delegation relative to lease and licence matters has been considered in accordance with Council's Property Management – Leases and Licences Policy 2012.

RISK IDENTIFICATION & MITIGATION

22. The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>If the revised delegation is not supported, this will limit improvement to efficiency in managing leases and licences</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Adopt the revised delegation, as recommended.</i>

FINANCIAL IMPLICATIONS

23. There are no financial implications relevant to this item.

LEGAL IMPLICATIONS

24. The revised delegation reflects the provisions of the *Local Government Act 1995* and the *Land Administration Act 1997*.

ALTERNATE OPTIONS

25. Council may:
- Resolve not to adopt the revised delegation and the existing delegations will remain in place; or
 - Adopt the revised delegation, allowing improved clarity in how to apply the delegations and greater efficiency for the handling of leasing and licencing functions.

SUMMARY CONCLUSION

26. A review of the delegations relative to leases and licences administration functions has been undertaken with the view to improving their clarity and application to current day practices. This review will result in a reduced number of low risk and low value lease and licence matters being referred to Council. It is recommended that Council adopt the revised delegation, as contained in Attachment 1 to this item.

Consulted References	:	<i>Land Administration Act 1997</i> <i>Local Government Act 1995</i>
File Number (Name of Ward)	:	PE.AUT.1
Previous Reference	:	OCM 18/9/2012 Item 1.3

Attachment 1**Proposed Revised Delegation Relating to Leases and Licences****Matters Relating to Leases and Licences****Function and Delegation** (*Authority to exercise the following functions and sub delegate is*):

Authority to:

- (1) Process requests related to leases and licences.
- (2) Negotiate terms, conditions and rent for leases and licences.
- (3) Approve requests to take up a lease option on a current lease/licence or sub-lease/licence, provided there being no variation to the principle terms of the lease/licence and all accounts being paid in full;
- (4) Approve requests to vary a lease/licence, provided there being no variation to the principle terms of the lease/licence.
- (5) Renegotiate current lessee or sub-lessee rental, the figures being within the market rent valuation undertaken by a licensed Valuer.
- (6) Approve requests to assign a lease for current lessee or sub-lessee, provided there being no variation to the current lease conditions; and
- (7) Approve requests for a sub-lease where there is a current lease in place.
- (8) Surrender of a lease/licence of any property, where the balance of lease/licence payable does not exceed \$10,000 and all accounts being paid in full.
- (9) Appoint persons to administer any or all of the above functions.

Conditions and Exceptions (*Appointment of persons is restricted to the Chief Executive Officer*):

Conditions:

- (1) Authority to process matters relating to Leases and Licences, as follows:
 - Settled terms and conditions to be approved by the delegate as soon as practicable.
 - Definition of lessee includes a licensee where the context permits.
 - Where the lessee disputes the market rent increase, the delegate may negotiate a lesser increase to lease/licence rent subject to:
 - a. the lessee providing to the City at the lessee's cost, a written rental valuation undertaken by a licensed Valuer on or prior to the date upon which the increased rent is to apply; and
 - b. the City and the lessee reaching agreement on a new lease/licence rental that is not less than 80% of the market rate as determined by the City's Valuer to a maximum amount of \$5,000 per annum.
 - Principle terms include (but not are not limited to):
 - a. Term including further term options.
 - b. Leased area.
 - c. Rent.
 - d. Permitted Use.
 - e. Guarantee & Indemnity.
 - The lease agreement specifying that rental reviews will be made in accordance with market conditions.
 - The market rentals for similar properties generally indicating that existing rental represents a fair market rental.
- (2) Compliance with Council Policy Property Management – Leases and Licences is required.
- (3) All new leases and licences will be referred to Council for consideration.

Delegate(s): Chief Executive Officer

Sub-Delegates (*Authorised Officers*):

- Executive Director Corporate Services

Legislative Powers (Reference):

- *Local Government Act 1995, s3.1; s 3.58 (Disposing of property (lease); and*
- *Land Administration Act 1997, Part 6 (Sales, lease, licences, etc of Crown land)*

Group: Corporate Services – Property **Delegator:** Council