

Reviewing a lease

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User guide 2.6 – Reviewing a lease

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Contents – UG2.6

Reviewing a lease

1. Introduction

1. Disclaimer
2. User Guide 2.6 & Related LPC Guides & tools
3. Overview of the LPC User Guide Series
4. Overview of the sectors we serve

2. When & why do we do lease reviews

- a) What do we mean by a lease review?
- b) When to undertake a lease review?
- c) Why is it important for a tenant to do lease reviews?
- d) **Task 1**

3. A closer look at the lease review purpose & process

- a) Key lease terms & our guidance to lessees
- b) Lease review before executing the lease
- c) Lease review after lease execution
- d) Lease review relating to lease exit
- e) **Task 2**

4. What we learn from common lease review mistakes

- a) Overview of common lease review mistakes
- b) Common lease review mistakes & lessons learnt
- c) Case studies
- d) **Task 3**



USER GUIDE 2.6 – ‘Related user guides & tools’

Reference & Topic	Tool	Refer
What makes a commercial lease..?	User guide	UG1.1
What makes a commercial lease..?	Video user guide	UG1.1-VIDEO
“Getting to a ‘tenant friendly’...	User guide	UG1.2
“Getting to a ‘tenant friendly’...	Video user guide	UG1.2-VIDEO
HOA review	Video user guide	UG2.5-VIDEO
HOA review	Checklist guide	UG2.5-CHECKLIST
HOA review	Template	UG2.5-TEMPLATE
‘Negotiating & reviewing a lease’	Video use guide	UG2.6-VIDEO
‘Negotiating & reviewing a lease’	Checklist guide	UG2.6-CHECKLIST
Glossary of leasing terminology	User Guide	UG-GLOSSARY



The LPC User Guide Series for commercial tenants 'Overview of the User Guides'

Key focus – Optimising your lease agreement & tenancy

Optimise your lease – The LPC guide

#1 – Before the lease

- Clarify' business objectives
- Right' needs analysis
- Right' premises brief
- Right' premises search
- Right' evaluation of shortlist
- Right' Heads of Agreement
- Right' premises due diligence
- Right' lease terms
- Right' fit-out
- Right' relocation or refurbishment

#2 – During the lease

- Never' miss a critical date
- Never' overpay your rent
- Never' overpay your outgoings
- Never' miss an opportunity
- Ensure' your landlord complies
- Ensure' you comply
- Ensure' the premises comply
- Ensure' a safe workplace
- Ensure' a productive workplace
- Ensure' leverage for the future

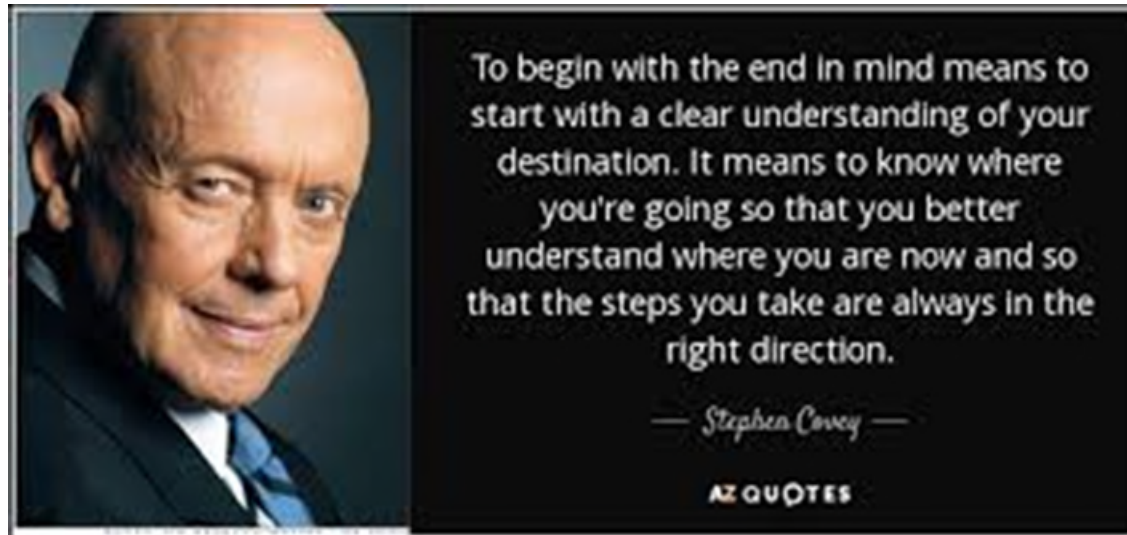
#3 – Exiting the lease

- Clarify' strategic objectives
- Assess' option to renew
- Assess' opportunity to restructure
- Assess' rights to surrender
- Assess' rights to sub-lease or assign
- Assess' make good obligation
- Assess' relocation impacts and cost
- Execute' decision re stay or go
- Execute' make good or refurbishment
- Execute' relocation & lease exit

#1 – Before the lease

- ❑ 'Clarify' business objectives
- ❑ 'Right' needs analysis
- ❑ 'Right' premises brief
- ❑ 'Right' premises search
- ❑ 'Right' evaluation of shortlist
- ❑ 'Right' Heads of Agreement
- ❑ 'Right' premises due diligence
- ❑ **'Right' lease terms**
- ❑ 'Right' fit-out
- ❑ 'Right' relocation or refurbishment

These **User Guides** focus on activities that take place **'before the lease'**, to help lessees **clarify** their business strategy, their related **accommodation needs**, and they **guide lessees** through a process that results in a **'tenant friendly lease'**.



#2 – During the lease

- ❑ 'Never' miss a critical date
- ❑ 'Never' overpay your rent
- ❑ 'Never' overpay your outgoings
- ❑ 'Never' miss an opportunity
- ❑ 'Ensure' your landlord complies
- ❑ 'Ensure' you comply
- ❑ 'Ensure' the premises comply
- ❑ 'Ensure' a safe workplace
- ❑ 'Ensure' a productive workplace
- ❑ 'Ensure' leverage for the future

These **User Guides** focus on activities that take place **'during the lease'**, to help lessees **optimise** lease arrangements through **mitigating** common lease management **mistakes** made by lessees, together with **guidance** as to how to avoid common mistakes.

Leases need to be overseen,
not overlooked

RECAP -
What
problems
are we
solving?

Lease Management Solution



Never enter into a bad lease !



Never miss a critical date !



Never overpay !



Never miss an opportunity !



IFRS 16 Compliance !

#3 – Exiting the lease

- ❑ 'Clarify' strategic objectives
- ❑ 'Assess' option to renew
- ❑ 'Assess' opportunity to restructure
- ❑ 'Assess' rights to surrender
- ❑ 'Assess' rights to sub-lease or assign
- ❑ 'Assess' make good obligation
- ❑ 'Assess' relocation impacts and cost
- ❑ 'Execute' decision re stay or go
- ❑ 'Execute' make good or refurbishment
- ❑ 'Execute' relocation & lease exit

These **User Guides** focus on activities that take place 'to exit the lease', to help lessees **optimise their exit** having regard to the **lease constraints**, and to the occupier's **business risks and business objectives** into the future.



The LPC User Guide Series

'Overview of the SECTORS we serve'

Key focus – Optimising your lease agreement & tenancy

Destination – “A tenant friendly commercial lease”

Definition – ‘Lease’

A **contract** that creates the relationship of **landlord and occupier**. A contractually binding agreement that grants a **right to exclusive possession** or use of property, usually in return for a **periodic payment** called rent.

Encyclopaedia of Real Estate Terms 2nd Edition,

Damien Abbott



Part 1 – When & why do we undertake lease reviews? Reviewing a lease

Key focus – Optimising your lease agreement & tenancy

What do we mean by a lease review?

1. From a tenant advisor perspective (not a legal perspective), the lease review that **occurs prior to execution** is a review of the commercial terms set out in the lease documentation, **to ensure the lease terms match the heads of agreement and related lease negotiations**. In this context, the lease review precedes execution and, from the lessee perspective, is a process aimed at formalising the accommodation terms per the agreement with the lessor. Once the Lease is executed it becomes binding on both the tenant and the landlord.

2. Limited or focused lease reviews are conducted **post lease execution** to ensure effective lease management **aimed at ensuring the lessee optimises their tenancy within the framework of the lease agreement**. Lease review post execution focuses on ensuring critical dates are adhered to, payments are per the lease agreement, occupancy cost budgets are accurate, lease obligations are carried out by the lessee and lessor, and that notices and disputes are handled per the lease terms.

3. In relation **to lease exit**, a focused lease review of the provisions relating to exit is required **to ensure the lessee complies with the provisions and optimises the opportunities to be found in these provisions**. It is often the case that lessees do not pay enough attention to lease review of exit provisions and opportunities, and that this omission results in avoidable exit costs and unrealised opportunities.

(Refer:: UG2.5 – HOA; UG3.1 – Critical Date Management; UG4.1 – Lease Exit)



When should a lease review be undertaken? – Before!

A. 'Before the lease' – 'Before your sign!'

In pursuit of a 'tenant friendly lease', it is essential to undertake a thorough Lease Review "before" entering a Lease to **ensure you sign up to a lease with tenant friendly commercial terms**. This occurs after the heads of agreement, and is the final step before the Leases are signed by the parties. We recommend that the lease review is undertaken by:

- i. **The tenant** – to ensure the lease fits the business requirement
- ii. **The tenant's advisor** – to ensure the lease reflects the HOA & is tenant friendly
- i. **The tenant's solicitor** – to ensure correct legal expression & tenant protections

In the module on the 'heads of agreement" we highlighted that the lease you sign is inextricably tied to the HOA you enter into, and we repeat this point here. The next slide which highlights key commercial terms requiring detailed review before execution ...

(Refer – **USER GUIDE 2.5 for more on HOA review**)



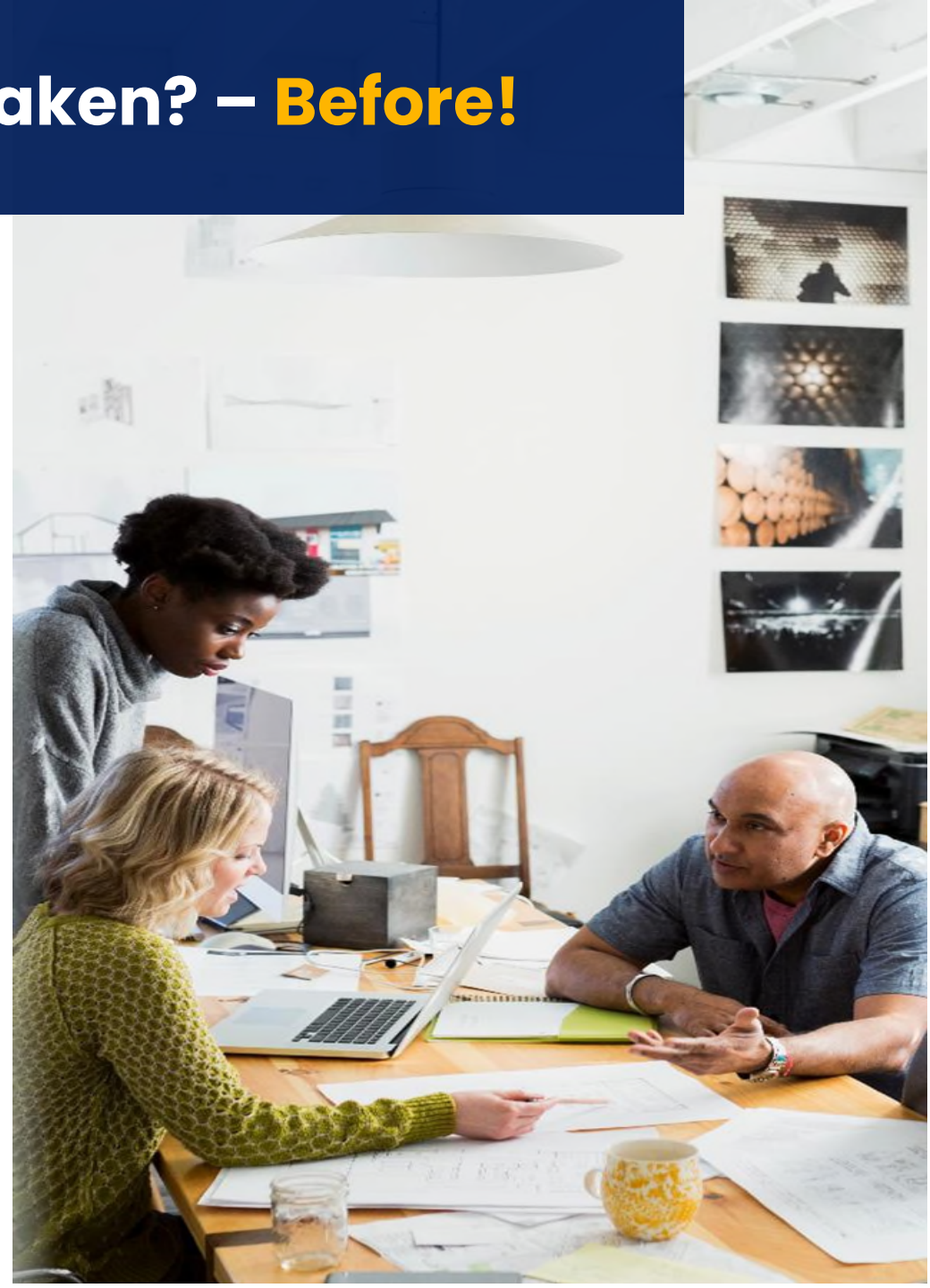
When should a lease review be undertaken? – Before!

A. 'Before the lease' – 'Before you sign!'

Getting the lease right up front via commercial & legal lease review is critical, for when the 'ink is dry' then the 'negotiations have landed'. **The reference points for this lease review are the HOA, the Brief, the lessor's proposal, the minutes of meetings, & related correspondences.** These are the minimum items we include in a HOA, and then validate for proper expression in the draft lease:

- Leased premises identity and description
- Premises use and limitations where applicable
- Premises rights related to signage and parking and storage
- Dates for access, occupancy, rent commencement
- Lease Term including Option(s) to renew
- Effective Rent determination and rent review mechanism(s)
- Outgoings scope and review mechanisms and obligations
- Rent review terms of reference for the Option(s) to renew
- Premises works rights and obligations of the parties
- Security provisions
- Insurance provisions
- Legal costs
- Landlord obligations for the building policy and building services
- Flexibility provisions for assignment and sublease
- Flexibility options for early termination and expansion / contraction
- Obligations or rights for refurbishment, redecoration, and make good
- Required disclosures and / or warranties from the landlord

(Refer – User Guide 2.5–Heads of Agreement)



When should a lease review be undertaken? – **During!**

B. 'During' the lease' – After you sign!

After lease execution comes lease management as leases need to be overseen and not overlooked. A lessee will need to review their lease(s) in relation to:

- i. **Critical date abstraction** – immediately post execution to set up tasks for key lease dates
- ii. **Lease accounting** – immediately post execution to facilitate the right IFRS16 journal entries
- i. **Payments validation** – the lease is the reference point for validating landlord invoices
- ii. **Obligations** – the lease is the reference point for ensuring lessor / lessee fulfil their obligations
- iii. **Disputes** – the lease is the reference point for when things go wrong in the tenancy

These are just some of the post lease execution situations that require full or partial lease review for a specific purpose.

It is also necessary to conduct lease reviews, or limited lease reviews, when **exiting** a lease. see the next slide ...

(Refer – **USER GUIDE 3.1 for more on Lease Management**)



When should a lease review be undertaken? – Exiting!

B. 'Exiting' the lease' – Time to move on!

When the time comes for a tenant to exit a lease the lessee will need to review their lease(s) in relation to:

- i. **Make good obligations** – to ensure timely completion of obligations and / or negotiate alternative
- ii. **Release of security** – to ensure timely release of guarantees and / other securities
- i. **Exit obligations** – the lease is the reference point for lessor / lessee exit obligations
- ii. **Disputes** – the lease is the reference point for when things go wrong with the exit

These are just some of the exit situations that require full or partial lease review to protect the lessee's interests. Omissions in relations to the lease exit requirements lead to risks that include delayed exit, double payment of rent, slow release of securities, unexpected make good obligations, and potential landlord claims.

(Refer – **USER GUIDE 4.1 for more on Lease Exit**)



Why is the lease review important?

Getting stuck with a 'bad lease', and / or getting stuck 'in a bad premises', will invariably have its origins in an unfriendly HOA and /or an inadequate lease review.

Businesses cannot get away from bad leasing decisions once they are made. Such decisions harm the business, and need to be avoided.

The time and attention given to a commercial lease review and a legal lease review will determine how well the risk of 'getting stuck with a bad lease' is managed. Establishing a tenant friendly HOA that matches the business risks is a significant step towards a tenant friendly lease.

There are no or few rules as to what is to be considered in a lease agreement. While the typical HOA / lease items are listed in a previous slide, the best guide to the content and is to keep the destination of working towards a 'tenant friendly lease' in the forefront of one's thinking.

(Refer: USER GUIDE 2.5 - HOA)



Why is the lease review important? – Continued

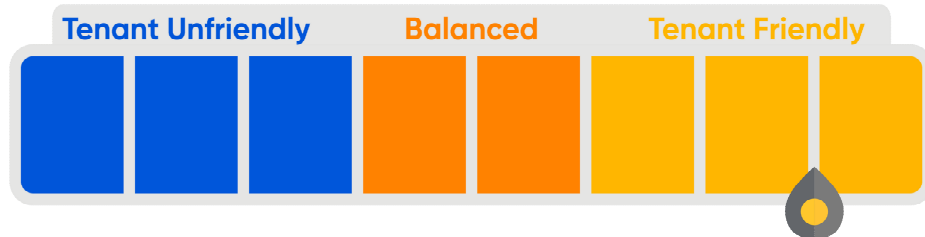
Lease Negotiations

“In business as in life – you don’t get what you deserve, you get what you negotiate.”

Chester L. Karrass

This statement could read – “you get the lease you negotiate which is tied to the HOA you negotiate.”

Ken Lam for LPC



Part 2

'A closer look at the lease review purpose & process'

'If you want a tenant friendly lease outcome, remember that the 'devil is in the detail' of the commercial terms''

John Reed for LPC



Key lease terms & our guidance

Part 2a)

Part 2a) – key lease items & our guidance

GUIDANCE – The HOA & lease must fully capture agreed commercial terms, leaving no room for ambiguity or exit by 1 party during the lease execution phase.

HOA item	Essential
#1 – The Premises	Premises details including plans, measurements, parking , storage, signage, rights to shared facilities, and any premises attributes important to you as the tenant.
#2 – Premises Use	Make this as broad as possible having regard to your business plans into the future, and to ensure you can adapt your premises use to a changing environment.
#3 – Premises Rights	Ensure you have no restrictions relating to access or making the premises fit for business, and ensure the premises attributes that are important to you are captured with related landlord obligations.
#4 – Key lease dates	Capture key dates such as the dates for access, rent commencement, lease expiry, option(s) to renew, and any other options that are agreed to. Also capture key dates to progress the HOA to lease execution.
#5 – Lease Term	Be clear on the Lease Term, the option term(s), and any related options to expand or contract or terminate early. Ensure that the landlord discloses anything that would or may interrupt the Lease Term.
#6 – Effective Rent	Record the Agreed Face Rental, the value and form of the incentives, and the Effective Rental. Be clear and specific about the incentives leaving no room for later disagreement.
#7 – Outgoings	Important to detail what is included in outgoings and what is specifically excluded. Seek to cap outgoings increases and include obligations on the landlord to ensure efficiencies.
#8 – Rent Review	In relation to the annual review, negotiate that the agreed adjustment is applied to the Effective Rent. For market review provisions, ensure no 'ratchet' and that the valuation relates to a new tenant.
#9 – Premises Works	Important that any known works to be carried out are recorded together with the related party responsible and the timing. Consider requiring landlord works at points during the Term of the lease.

Part 2a) – key lease items & our guidance

GUIDANCE – The HOA & lease must fully capture agreed commercial terms, leaving no room for ambiguity and an exit by 1 party during the lease execution phase.

HOA item ...	Essential
#10 – Security Provisions	Landlord solicitors often strengthen security provisions so be specific about the security provisions and limit them. Seek to agree reduced guarantees over the Term & specify dates & process for release.
#11 – Insurance & indemnity	Landlord solicitors often try to strengthen landlord protections in the lease negotiations. Ensure your insurance and indemnity undertakings in the HOA are specific and limited.
#12 – Legal Costs	Ensure the HOA requires each party to bear their own legal costs relating to lease execution, and also relating to key lease events following lease execution.
#13 – Landlord Obligations	From HOA to lease execution the norm is for tenant obligations to increase. Limit this by specifying landlord obligations in the HOA (e.g. Premises policy, Building services, Works, End of trip, etc.)
#14 – Flexibility Provisions	Flexibility can end up being more important than rent provisions when things go wrong. Try to ensure the HOA records unrestricted rights to assign, sub-lease, and licence other activities on premises.
#15 – Flexibility Options	Having regard to business risks into the future, it may be important to negotiate options relating to contraction, expansion, & early termination. Be sure to capture these in the HOA.
#16 – Premises Obligations	In addition to #13 above, give consideration to what would make the Premises 'fit for purpose' throughout the Term and include related landlord obligations in the HOA.
#17 – Premises Rights	A commercial lease gives you certain rights to run a business from the Premises for the Term. Use the HOA to ensure that this right, and the business, is not compromised or limited by lease restrictions.
#18 – Disclosures & Warranties	It often occurs that a tenant unfriendly term like a Demolition clause is introduced during lease negotiations. Use the HOA to capture any disclosures or landlord warranties that protect the would be lessee
#18 – Exclusivity re competitors ++++	Think through all other items that make the lease work for your business over the Term and seek to include related provisions. A common item is a landlord undertaking about competitors or other tenants.

Part 2a) – key lease items & their importance

The way in which key items are captured in the lease will determine if the lease is tenant friendly

	'Tenant unfriendly'	Key Lease Item	'Tenant friendly'
1.	Narrowly defined such that surprise add-on occupancy costs materialise post the HOA	Leased Premises	Detailed & accurate per agreement including parking, storage, communal, end of trip
2.	Narrow Premises Use rights that require landlord approval for business activities per business plan	Premises Use	Broad usage rights aligned to lessee business outlook including right to licence activities at the Premises
3.	Restricted rights and / or the need to get landlord approval for matters tied to the lessee's business	Premises rights	Unrestricted access and rights in relation to the lessee's business strategies into the future
4.	Access and rent commencement are the same date resulting in double rent obligations	Key dates	Adequate access before rent commencement to enable relocation and fitout prior to rent
5.	No provisions for contraction or early termination & above market increase terms & demolition clause	Lease Term	Options to renew together with favourable provisions for exit & contraction during the Term
6.	Adjusts from effective to face rent in the option term and with ratchet provisions	Effective Rent	Net of incentives in the initial & option terms with no ratchet provision but with a collar
7.	Broadly defined with risk borne by the tenant & no cap or landlord obligation to ensure efficiencies	Outgoings	Narrowly defined with the landlord accountable for building and outgoing efficiencies



Part 2a) – key lease items & their importance

The way in which key items are captured in the lease will determine if the lease is tenant friendly

	'Tenant unfriendly'	Key Lease Item	'Tenant friendly'
1.	Annual increases with a minimum % on Face Rent, market review tied to Face Rent with ratchet.	Rent Review	Annual tied to effective rent & cpi or low fixed %. Market review tied to effective rent, no ratchet.
2.	Undisclosed works that occur during term & that diminish tenancy without rent relief.	Premises Works	Disclosed works during term with provisions for rent reduction related to impact on tenancy
3.	Onerous bank guarantee that increases with rent increase, together with personal or other security	Security Provisions	Ideally, no guarantee. Aim for bank guarantee with partial release during term. No personal guarantees.
4.	Landlord requires onerous tenant indemnities and warranties with a shift if insurable risk to the tenant	Insurance & Indemnity	Limited tenant indemnities and warranties and insurances with risk transfer to landlord
5.	Legal costs covered by the tenant for all matters including lease preparation, disputes, & other ...	Legal Costs	Incurred by the party that requires the legal advice and representation
6.	Deep & broad tenant obligations with limited landlord obligations expressed with ambiguity	Landlord Obligations	Specific landlord obligations directed at ensuring the premises 'works' throughout the tenancy
7.	Assignment & sub-lease and ability to licence all subject to landlord approval, & with limitations.	Flexibility Provisions	Unrestrictive rights to assign, sub-lease, and licence with broad Premises Use rights.

Part 2a) – key lease items & their importance

The way in which key items are captured in the lease will determine if the lease is tenant friendly

	'Tenant unfriendly'	Key Lease Item	'Tenant friendly'
1.	Silent on flexibility options with implicit exclusion. Long term lease with limited exit provisions.	Flexibility Options	These 'options' include contraction & expansion options, & early termination options
2.	Uncapped & onerous make good with deep tenant obligations for redecoration & maintenance	Premises Obligations	Ideally – nil or low make good' payment & landlord contribution to redecoration during Term
3.	Restricted use of the premises & facilities with onerous tenant responsibilities	Premises Rights	Unrestricted use of the premises & facilities with related landlord obligations
4.	Nil disclosures in relation to matters such as intended works, council plans, sale of asset	Disclosures	Full disclosures in relation to intended works, council plans, sale of asset
5.	Deep & broad tenant warranties with limited landlord warranties	Warranties	Seek landlord warranties for matters the landlord has control of which are essential to the tenant
6.	HOA is silent on exclusivity when this directly impacts the tenant's business	Exclusivity	If the asset is multi-tenanted the tenant may seek landlord assurance of exclusivity



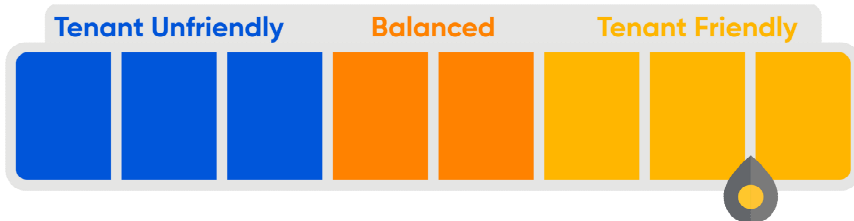
Task 2 – The tenant friendly lease

Task 2 – Checkpoint | Your lease & your HOA

In the **client portal** you will find an example of a **tenant friendly HOA** (also in the pages that follow) which is the foundation of a tenant friendly lease:

- Review the example of a tenant friendly HOA
- Reflect on the following:
 - How would this tenant friendly HOA have impacted the lease
 - Which commercial terms could be more tenant friendly & why?
 - What is the difference between a commercial & a legal lease review?

Key focus – Ensure the lease fits your business needs.



HOA – Case study | 'tenant friendly lease terms'

NO	ITEM	DETAILS
Item 1.	Property Address	a) 2 Sydney Road, Sydney NSW 200
Item 2.	Premises	a) Tenancy 5: 600 sqm b) The Lessor, at its cost to prepare Survey plans. Except as provided elsewhere, Net Rent and Outgoings will be calculated using the NLA of the Premises.
Item 3.	Lessor Entity Name in Full	a) Landlord Details (ABN XXXX) (Lessor)
Item 4.	Lessee Entity Name in Full	a) Tenant Name (ACN XXXX) (Lessee)
Item 5.	Lease Commencement Date	a) 1 August 2021, subject to the Lessor Works being completed and handed over to the Lessee by 1 June 2021 (Handover Date). Any delay in the Handover Date will result in the same delay in the Lease Commencement Date.
Item 6.	Access for Fitout and Occupation	a) No rent or outgoings to be paid during fitout period. b) Handover Date to be no later than 1 June 2021 c) Prior to Handover Date, the Lessee must provide: (i) Lease executed by the Lessee; (ii) Certificates of Currency for Insurances required under the Lease; Copies of approved Fitout and Signage plans.
Item 7.	Lease Term	a) Five (5) years (Initial Term) b) Lease Expiry – 31 July 2026, or later date as provided for in Item 5.
Item 8.	Options to renew	a) One term of five (5) years (Option Period) b) Option notice to be served in the window between three (3) months and six (6) months prior expiry of the Initial Term.
Item 9.	Sub Leasing or Assignment	a) The Lessee requires the right to assign its lease, the right to sub lease all or part of the Premises and the right to grant licences to respectable entities who can demonstrate their ability to pay the rent, outgoings and other payments under the lease. b) The Lessor's approval will not be unreasonably withheld or delayed. c) While the Lessee is Tenant Name, assignment to a related body corporate (as defined under the Corporations Act) will not require the Lessor's consent.
Item 10.	Commencing NET Rent	a) \$400 sqm pa. At the commencement of the Option Period, the rent will be the then Market Rent (\$/sqm pa) x the GLA of the Premises.
Item 11.	Rent Reviews	a) On each anniversary of the Lease Commencement Date during the Initial Term the Net Rent shall increase by CPI% b) At the commencement of the Option Period, a Market Rent Review will apply. The Market Rent Review will comply in all respects with the relevant provisions of the NSW Retail Leases Act. For avoidance of doubt,

LPC Cresa

HEADS OF AGREEMENT

NON-BINDING

FOR THE LEASE OF

2 Sydney Road, Sydney

FOR & ON BEHALF OF

Landlord Entity
(LESSOR)

&

Tenant Name
(LESSEE)

1 January 2021

LPC Cresa
Level 3
16 O'Connell Street,
Sydney NSW 2000

Tel: (02) 9235 1300

www.lpc.com.au

HEADS OF AGREEMENT "TENANT FRIENDLY"
2 Sydney Road, Sydney
January 2021

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HOA – Case study | 'tenant friendly lease terms'

HEADS OF AGREEMENT "TENANT FRIENDLY"
 2 Sydney Road, Sydney
 January 2021

lpcresca

NO	ITEM	DETAILS
		the Market Rent may be greater than or less than the Rent payable immediately prior to the Rent Review Date. c) On each anniversary of the date of commencement of the Option Period, the Net Rent shall increase by CPI%.
Item 12.	Outgoings	a) Outgoings are estimated at \$100/sgm per annum. Outgoings will be invoiced proportionally based on the NLA of the Premises / the NLA of the Centre. The Outgoings include all operating expenses and charges reasonably and properly incurred for the Land or the Building b) The Lessee is responsible for the utilities consumed on the Premises c) The Outgoings provisions in the lease will comply in all respects with the NSW Retail Leases Act and exclude any capital expenditure and any contributions to a sinking fund.
Item 13.	Method of Payment	a) Rent, Outgoings and other charges are to be paid monthly in advance by Electronic Funds Transfer (EFT).
Item 14.	Incentive Offered	a) The Lessor will provide the Lessee with an incentive equal to \$100,000 plus GST and Lessee can elect to apply the incentive as follows: 1. Rent free from the Lease Commencement Date. 2. Towards fit out contribution 3. Or a combination of Item 1 and 2, at the Lessee's election
Item 15.	Lessee's Fitout Works	a) The Lessee will provide plans and specifications for the Lessee's Works for the Lessor's approval. Such approval shall not be unreasonably withheld, delayed or conditioned. b) The Lessee, at its cost will procure Council approval for the Lessee's Works, if relevant.
Item 16.	Lessor's Works	The premises must be handed over to the Lessee in good and substantial repair and condition ready for fitout works by the Lessee (Lessee Works). As a minimum, the Lessor at its cost and prior to the Handover Date will provide: a) Unless specified to the contrary below, all existing fixtures and fittings are to be removed from the premises, with any damage made good; c) Double entry automatic doors d) All internal faces of the perimeter walls shall be repaired as required to provide a uniform smooth finish and repainted, colour choice to be elected by the Lessee. g) Sub-divide the power and lighting, evaporative air-conditioning circuits and provide the Lessee with its own tenancy distribution board and sub-meter; h) Ceiling services including new high bay LED lighting, air-conditioning, fire services etc with specifications to be provided by the Lessee; j) The existing floor to be provided with no carpet and to be levelled and provided in a smooth polished concrete finish. k) Supply and install new toilet facilities, kitchenette including universal access toilet in a location to be agreed with the Lessee;

HEADS OF AGREEMENT "TENANT FRIENDLY"
 2 Sydney Road, Sydney
 January 2021

lpcresca

NO	ITEM	DETAILS
		i) Any other repairs required included handover the Premises in fully refurbished condition; m) Confirmation (including required certification) that the Premises are fully compliant for occupation for the Permitted Use; Removal of all ceiling grid/ tile and to be provided in an exposed condition. The ceiling to be left in a clean, tidy, safe condition. n) All works must be completed by the Handover Date (1 June 2021). Any delay in the Handover Date will result in the same delay in the Lease Commencement Date.
Item 17.	Car parking	a) The Lessee has exclusive use of all car parking bays within the complex, at no additional charge. b) All customer parking shall be free of charge for the term of the lease.
Item 18.	Signage Rights	a) External building signage is required on the signage pylons and on the facade of the building. The Lessee will provide its signage proposal for the Lessor's approval. Such approval not to be unreasonably withheld or delayed.
Item 19.	Redecoration and Make Good at Expiry	a) No redecoration provisions to apply during the term or Option Period. On lease expiry, the Lessee agrees to remove all personal property and including all inventory. The Lessee will remove any external signage installed by the Lessee. The Lessee's other obligations at lease expiry must be limited to rubbish removal and leaving the Premises in a clean and tidy condition
Item 20.	Lessee Insurances to be maintained during the Term	a) Public Risk Insurance for not less than \$20 million b) Comprehensive insurance policy for the replacement value of the Lessee's Fixtures and Fittings and other assets located at the Premises. c) Plate glass insurance for internal glass (if any). d) Workers Compensation Insurance as required by Law.
Item 21.	Permitted Use	a) Any use as permitted by law
Item 22.	Marketing Levy	a) Not applicable
Item 23.	Lease Security	a) No Lease Security will be required while the Lessee is Tenant Name.
Item 24.	Loading	a) The Lessee shall will have access to the loading dock facility and the Lessee will be permitted to bring stock through the centre from the front entry of the complex.
Item 25.	Building Compliance	a) The Building, including Building Services, will be compliant at the Handover Date for the Permitted Use - Showrooms
Item 26.	Repairs and Maintenance - Lessor	a) For the Term and Option Period, the Lessor must at its cost keep the building structure and the building services (air conditioning, fire services, hydraulic service etc) in good working order and to ensure compliance with all legislation and building regulations. It is noted that some items will be recoverable from the Lessee through the Outgoings.

HOA – Case study | ‘tenant friendly lease terms’

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NO	ITEM	DETAILS
Item 25	Repairs and Maintenance - Lessee	(1) The Lessee must, at all times, keep the Premises and the Lessee's fixtures and fittings in good repair and condition, for year and year excepted.
Item 26	Building Rules	(1) Unrestricted building hours in accordance with the Strata Management Act.
Item 26	Failure of Building Services	(1) The Lessee shall include cost containment provisions in the event of failure of building services, including but not limited to air conditioning, fire services and hydraulic services. The Lessee provides full details on its website for the Lessee to notify any failure prior to cost containment.
Item 28	Consent to Security	(1) The Lessee consents to the Lessee (granting a mortgage of the Lessee or security interest in relation to this lease (the Security)) and if required by the Lessee's Solicitor, agrees to <u>underwrite</u> a right of entry deed or terms acceptable to the Lessee's Solicitor, acting reasonably.
		(2) The Lessee agrees that none of: (i) the creation or existence of the Security; (ii) the appointment of any administrator or a receiver or manager to the Lessee; or (iii) the exercise by any Director or any trustee, agent, attorney or receiver appointed under any Security (each and including Party) of any powers conferred under or in connection with the Security; will of itself constitute or constitute a breach or default under the Lease or entitle the Lessee to exercise any right or power, or to any damages or equitable relief or to terminate or suspend the Lease but this does not affect any rights of the Lessee in respect of breaches of the Lease by the Lessee; and
		(3) The Lessee agrees that, following enforcement of the Security, any Defaulting Party may, but is not obliged to, terminate all or any of the powers conferred under or in connection with the Security or the Lease, and perform all or any of the obligations of the Lessee under or in relation to the Lease as if it were the Lessee to the exclusion of the Lessee (within the period in which it is to exercise that and other that period). If the Defaulting Party <u>underwrites</u> provisions of the Premises, it will not be responsible for any liability of the Lessee in connection with the Lease arising prior to the date that it entered into possession.
Item 31	All other Terms and Conditions	(1) Any other rights and obligations of the Lessee and the Lessee shall be in accordance with the Strata Management Act.
Item 32	Exclusive Occupancy Period	(1) Each party shall deal with the other exclusively for a period of thirty (30) business days from the execution of this Heads of Agreement.
Item 33	Other	(1) GST. All amounts added to the proposed net-inclusive of GST. The net Inlet, Outgoing, Services and all other amounts referenced under the Lease will be subject to the Goods & Services Tax (GST). The Lessee will be responsible to pay the Lessee for the GST applicable on the net Inlet and other amounts payable under the Lease including payments by the Lessee to third parties for which the Lessee is not entitled to credit and

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NO	ITEM	DETAILS
		will not equal the value, and the Lessee will maintain appropriate reserves to this effect.
Item 34	Heads of Agreement	(1) Other than this Item 34, Item 37 and Item 41, the terms of this Heads of Agreement are not legally binding and are subject to and conditioned upon the execution of the Lease (and the Strata Management and the Lease) and shall be an integral lease agreement between the Parties with the Lease documentation to be executed by the parties.
		(2) The terms and conditions of this Heads of Agreement and any amendments declared by or on behalf of the Lessee or the Lessee in relation to this Heads of Agreement is confidential and not to be disclosed to any other party.
Item 35	Lease Documentation and Costs	(1) The Lessee will prepare the Lease, at its cost. Therefore, the Lessee and the Lessee will be responsible for their own costs in relation to reviewing, editing and executing the documents.
		(2) The Lessee, at its cost, shall arrange for execution of the Photocopy (if any).
		(3) The Lessee will engage the Lessee and the Lessee will be responsible for Lessee's own expenses costs. The Lessee will do all things necessary to ensure that the Lessee can execute the Lease.

A young woman with her hair in a bun, wearing a white button-down shirt and a plaid skirt, smiles warmly at the camera. She is in a modern office with wooden floors and large windows. In the background, other office workers are blurred, some sitting at a table with laptops, others walking. A large framed picture hangs on the wall.

Lease review before executing the lease

Part 2b)

Part 2b) – Lease review process before lease execution

GUIDANCE – The **lease** must fully capture **agreed commercial terms**, leaving no room for ambiguity or exit by 1 party during the lease execution phase. These practical steps help to protect the lessee interests in the lease review process. This guidance relates to, & is limited to, the finalisation of the commercial terms with **legal review to follow**.

	Lease review process – lessee perspective	Guidance for the lessee to protect lessee interests
1	Request that the draft lease be provided as a Word document to enable tracked changes & comments	Word enables proposed changes & comments to be tracked by date & person without creating a new file. An auditable record is important.
2	Preferably use the same Word file throughout the lease finalisation process using Word version control	Comparing versions is much simpler if the same file is used throughout using MS Word tracking if versions per date & time.
3	Have the HOA at hand & related correspondences & meeting minutes & Lessor's lease proposal & the brief	These documents capture the intention of the Parties & are used to validate, query, or amend the term as expressed in the draft lease
4	Start with a careful review of the Brief, Lessor's lease proposal, the HOA, & the related documents	Ensure a clear understanding of the intention of the parties & of the commercial terms set out in the HOA
5	Work through each clause in the lease & compare the clause with the HOA & the related documents (see 3)	Your aim is to query, clarify, amend, & finally to validate each clause as being consistent with the intention of the parties & the HOA
6	Use the MS Word tracking capability to keep track of the query, clarify, amend & validate process	This creates an automated MS Word trace of the back & forth with the lessor's representative which can be referred to if there is a dispute
7	If the interaction referred to above does not use MS Word tracking, the principle of tracking still applies	If PDF documents are exchanged, or MS Word tracking, you must still ensure interactions are recorded & traceable & auditable
8	Keep a record of the lessee requested changes & the basis for the request	Resolution is quicker when the request is referenced to a source document such as the Lessee's Brief, Lessor's Proposal, or the HOA

Part 2b) – Lease review process before lease execution

GUIDANCE – The **lease** must fully capture **agreed commercial terms**, leaving no room for ambiguity or exit by 1 party during the lease execution phase. These practical steps help to protect the lessee interests in the lease review process. This guidance relates to, & is limited to, the finalisation of the commercial terms with **legal review to follow**.

	Lease review process – lessee perspective	Guidance for the lessee to protect lessee interests
9	When working through each clause and / or term in the draft lease watch out for the following	Change from HOA; Different to the Brief or Lessor Proposal; Added Lessee obligations; Reduced Lessee rights; Risk transfer to Lessee; Ambiguity
10	Capture comments related to 8 & 9 for the lessee’s solicitor in a form that is easy for their review	It is often the case that the queries and amendments to commercial terms are via the lessee / lessor solicitors. Points 7-9 help the lessee solicitor
11	If one is advising on the commercial terms via the landlord solicitor then ensure planned negotiation	The process of getting the lessor to accept amendments is made simpler by skilled negotiation & clear reference points for amendments
12	Anticipate amendments that will be challenged & ensure an effective negotiation strategy	Add scheduled meetings to the digital exchange to talk through outstanding items, ensuring explanation is referenced
13	Look for trade-offs if items materialise that were not covered in the HOA & negotiations	At times, matters do arise that were not previously negotiated. explore compromises that benefit both parties. Focus on key items – Part 2b)
14	Move towards a Finalisation meeting for the purpose of agreeing terms on outstanding items	Joint tenant/landlord meeting with representatives and lawyers to resolve any remaining lease clauses not agreed between the parties.
15	Finalisation and execution	Make sure, make sure, make sure At a minimum a thorough commercial review, premises due diligence & legal review

A young woman with her hair in a bun, wearing a white collared shirt and a plaid skirt, smiles warmly at the camera. She is in a modern office with wooden floors and large windows. In the background, other office workers are blurred, some sitting at a table with laptops, others walking. A large framed picture hangs on the wall.

Lease review after executing the lease

Part 2c)

Part 2c) - Lease review(s) after lease execution

It is often said that once an agreement is signed you file it and only refer to it when needed. This is not the case with commercial leases, because **leases need to be 'overseen & not overlooked'** to optimise the tenancy.

It is the lease that determines one's tenancy, & it is **essential that the lessee implements 'targeted lease reviews' post lease execution** to ensure the lessee gets the most from their tenancy.

These **'targeted lease reviews' relate to lease matters that require oversight** including critical date management, payments validation, landlord obligations validation, and the handling of disputes.

The **next slide** describes these post lease execution reviews & their specific purpose...



Part 2c) – Lease review(s) after lease execution

GUIDANCE – The lease captures agreed commercial terms that are the framework for the lessee’s rights & responsibilities during their tenancy. The following ‘targeted lease reviews’ help the lessee optimise their tenancy.

	Targeted lease review & the purpose’	Purpose of the targeted lease reviews post execution & guidance
1	Critical date review – the purpose is to ensure the lessee ‘never misses a critical date	This review requires specialist lease abstraction to identify & diarise all critical dates found or implied or necessary to ensure the lessee’s tenancy is optimised.
2	Payments review – the purpose is to ensure nil over-payments & to contain occupancy costs	This review extracts all relevant payment & cost items to inform capex & opex budgets, to create payment validation checks, & to contain occupancy costs.
3	Landlord obligations review – the purpose of this review is to ensure landlord obligations ...	The lease sets our various landlord obligations that directly impact the tenancy. We recommend abstraction of the obligations & scheduled checkpoints
4	Dispute management review – the purpose of this review is to manage disputes per the lease	At times things do go wrong during a tenancy and may require formal resolution. This targeted review applies in these situations, and the review objective is to ensure tidy resolution

REFER – This table summarises the need for targeted lease reviews after lease execution & the type of review needed to manage and optimise the lessee’s tenancy. The **USER GUIDES on Critical Date Management & Payments Validation** provide further guidance on these matters.



A smiling woman with her hair in a bun, wearing a white collared shirt and a plaid skirt, stands in the foreground of a modern office. In the background, several other people are working at a long wooden table, some blurred to indicate movement. The office has large windows and a bright, airy atmosphere.

Lease review relating to lease exit

Part 2d)

Part 2d) – Lease review relating to lease exit

Leases come to an end for various reasons. Whatever the reason **lease exit requires a targeted lease review** to ensure lease obligations are met & rights are utilised.

Lease exits come about in different ways including lease expiry, breach leading to termination, lease surrender by agreement, not exercising an option to renew, exercising an option for early termination or contraction, an agreement with the landlord to restructure the lease arrangement, and a lease assignment. **Each event require lease exit having regard to the provisions in the lease.**

In each situation it is essential to conduct a thorough lease review focused on exit provisions & obligations. The related **lease exit matters include the exit process, notices, make good obligations, release of securities, & various other related matters.**

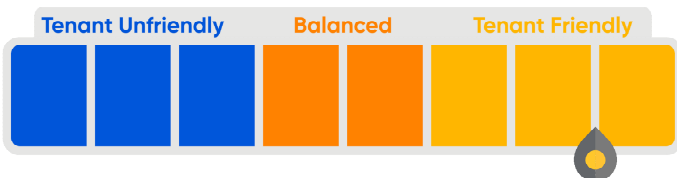
The **next slide** provides guidance on the recommended lease review(s) relating to lease exit & their specific purpose



Part 2d) – Lease review relating to lease exit

GUIDANCE – The lease captures agreed commercial terms that are the framework for the lessee’s rights & responsibilities during their tenancy. The following ‘targeted lease reviews’ help the lessee optimise their tenancy.

	Targeted lease review & the purpose’	Purpose of the targeted lease reviews post execution & guidance
1	‘Option to Renew’ review – the purpose is for the lessee to decide whether to exercise a renewal option	Lease review requires specialist lease abstraction of the renewal option to quantify the occupancy cost impact of renewal having regard to the lease provisions. Refer USER GUIDES IN SERIES 3
2	‘Stay or go’ review– the purpose is for the lessee to decide whether to exercise a renewal option, restructure, or go	Lease review requires specialist lease abstraction of the renewal option per 1 above plus quantifying lease exit obligations, plus ‘full ‘stay or go’ evaluation. Refer USER GUIDES IN SERIES 3
3	‘Lease exit review’ – the purpose of this review is to assess exit possibilities when business needs change	The lease sets out the provisions (or lack thereof) for early termination, assignment, contraction & related. The provisions inform decisions relating to exit. Refer USER GUIDES IN SERIES 4



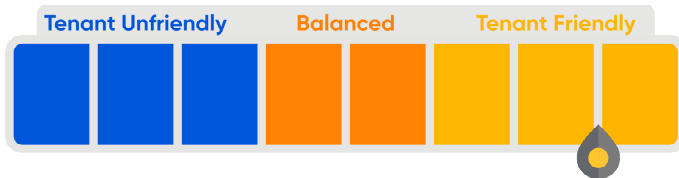
REFER – This table summarises the need for targeted lease reviews when a lessee needs to exit a lease and / or is considering lease exit. The USER GUIDES on LEASE EXIT provide further guidance on these matters.

Task 2 – Lease review after lease execution

Task 2 – Checkpoint | ‘Leases must be managed’:

- Checkpoint 1 – has your lease(s) been abstracted & all the critical dates identified & diarised for action?
 - Action 1 – If yes, review your lease to see if the critical date abstraction is complete & current. If no, do a lease review & create diary entries & actions for each critical date
- Checkpoint 2 – has your lease(s) been abstracted & all the current & future payment & cost obligations been identified?
 - Action 2 – If yes, review your lease to see if the payment & cost abstraction is complete & current. If no, do a lease review & establish related lease opex & capex budgets, & a reference point for validating costs, increases & other landlord charges

Key focus – Ensure you get a lease that works for the business.



Part 3

'Common lease review mistakes & lessons learnt'

"Know where the mistakes are and don't go there"

John Reed for LPC

Lease review – mistakes & their impact – Before...

“Know where the mistakes are made and don’t go there!”

John Reed for LPC

Lease review mistakes before execution

When the ‘ink is dry’ the lessee has to live with the lease they signed up to.

Common lease review mistakes relating to lease execution include:

1. Executing a lease without a thorough commercial & legal review
2. Not ensuring the HOA terms are accurately reflected in the lease
3. Accepting new lessee obligations added in during lease review
4. Renegotiating terms already specified in the HOA

Impacts on the lessee of these lease review mistakes include:

- Getting stuck with a tenant unfriendly lease agreement
- Lease is less favourable to the tenant than the HOA
- Risk & obligations increase for tenant & decrease for landlord
- Lease has ambiguous tenant rights that reduce value of tenancy
- Tenant rights may not be as enforceable as intended

Lessons learnt to avoid these lease review mistakes include:

- Get the initial Brief to market right & tight
- Get the HOA right & tight!
- Get ‘sign-off’ along the way on the negotiation path
- Clarify lessor proposals with auditable records & trail
- Get help from a reputable & conflict-free tenant advisor
- Don’t rely on your solicitor for review of commercial terms

REFER – The USER GUIDES from Series 2, 3, & 4 provide further guidance on these matters.



Lease review – mistakes & their impact – During...

“Know where the mistakes are made and don’t go there!”

John Reed for LPC

Lease review mistakes after execution

When the ‘ink is dry’ the lessee has to live with the lease they signed up to. Targeted lease reviews help the lessee optimise their tenancy.

Common lease review mistakes post lease execution include:

1. Not abstracting & diarising critical dates for action
2. Not abstracting & validating landlord payments, charges & increases
3. Not abstracting & holding landlords to their obligations

Impacts on the lessee of these lease review mistakes include:

- Risks relating to missing critical dates may cause significant harm
- Opportunities related to critical dates will be missed
- Potential to be overpaying on rent, outgoings, increases & other
- Potential to be paying for landlord related obligations
- Value of the premises & tenancy may deteriorate over time

Lessons learnt to avoid these lease review mistakes include:

- Don’t put the lease away after execution
- Leases need to be reviewed & abstracted & managed post execution
- Abstract the lease to systemise critical dates & payment validation
- Diarise audits to ensure landlord obligations fulfil lease obligations

REFER – The USER GUIDES from Series 2, 3, & 4 provide further guidance on these matters.



Lease review – mistakes & their impact – Exit...

“Know where the mistakes are made and don’t go there!”

John Reed for LPC

Lease review mistakes before execution

When the ‘ink is dry’ the lessee has to live with the lease they signed up to.

Common lease review mistakes relating to lease exit include:

1. Not understanding the occupancy cost impact of the renew option
2. Incomplete understanding the lease provisions for full or partial exit
3. Incomplete understanding of the make good & security release terms
4. Making ‘stay or go’ decisions with inadequate grasp of current lease

Impacts on the lessee of these lease review mistakes include:

- ❑ Making a poorly informed stay-go decision that harms the business
- ❑ Taking up an option when a lease restructure is preferable
- ❑ Understating make good costs & obligations & impacts
- ❑ Delayed release of securities

Lessons learnt to avoid these lease review mistakes include:

- ❑ Take out the lease & be sure to understand the exit provisions
- ❑ Do the numbers to validate exit decisions based on lease terms
- ❑ Superficial lease reviews for exit provisions result in understated costs
- ❑ Make sure, make sure, make sure

REFER – The USER GUIDES from Series 2, 3, & 4 provide further guidance on these matters.



Task 3 – Lease review mistakes & lessons learnt

Task 3 – Checkpoint | Mistakes & lessons learnt

At this stage we suggest you answer the following question:

1. Do a lease review of your lease(s) and rank the key items in relation to being tenant friendly or tenant unfriendly

Key focus – Ensure you have a tenant friendly lease



Reviewing a lease

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User guide 2.6 – Reviewing a lease

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