
New TLANZ agreement to lease and deed of lease released – more “plug and play” options but not a “one-size-fits-all” solution

The Law Association of New Zealand Incorporated (TLANZ) has unveiled new versions of its previously ADLS-branded agreement to lease and deed of lease, aimed at providing landlords and tenants with more options and embracing a number of recent commercial leasing trends.

On 25 November 2024, TLANZ (rebranded from the Auckland District Law Society Inc. (ADLS)) released new forms of:

- agreement to lease (Sixth Edition 2024), to replace the existing ADLS form (Fifth Edition 2012 (4)); and
- deed of lease (Seventh Edition 2024), to replace the existing ADLS form (Sixth Edition 2012 (5)).

The new forms (and more particularly the deed of lease) have been significantly updated to reflect industry feedback and current market practice over the last 12 years, while providing more flexibility and still intending to represent a relatively balanced position for use by both landlords and tenants. However, they are still not a “one-size-fits-all” solution, some updates favour one party over the other compared to the existing ADLS forms, and parties will need to consider their position carefully when negotiating leases on the new forms.

So what has changed?

One of the most significant changes is the updating of the first schedule to the lease forms to provide for a number of additional commercial variables. However, parties will need to exercise caution with the “plug and play” approach adopted by TLANZ, and default positions apply if they are not completed.

Key changes/highlights:

- **Agreement to lease** - The agreement to lease has been updated to incorporate the same changes made to the first schedule of the lease, and it is intended to be used in conjunction with the new lease form. Given the extensive changes to the first schedule to both forms, there is now less flexibility to mix the new forms with the old.

- **New options for rent reviews and adjustments** – There are now new options for:

- o fixed rent adjustments, which have become increasingly popular;

o variable rent collars and rent caps on rent reviews or adjustments (whether market rent or CPI) – including options for a hard ratchet, a soft ratchet, an initial term commencement date ratchet, or any other cap and/or collar variation the parties may agree on; and

o interim rent payments pending completion of market rent reviews.

• **Market rent reviews** – The market rent review process is now consolidated so it applies to both mid-term reviews and reviews on renewal. This means that market rent reviews on renewal (as well as mid-term reviews):

o can now be initiated any time up to the next review or adjustment date (whether a market review or CPI or fixed rent adjustment date); and

o are subject to the same strict deadlines (now increased to 30 working days) for objecting to any rent proposed by the party initiating the rent review.

• **Outgoings** – Tenants will welcome a more transparent pass through of outgoings. Several adjustments and clarifications have been made to the outgoings categories in the first schedule but no notable new categories of outgoings have been added. There is a clear obligation on the landlord to provide a budget for outgoings, but the landlord is only required to provide copies of assessments, levies and accounts relating to outgoings incurred if the tenant asks for them to verify and reconcile outgoings. The landlords is now unable to recover outgoings if an estimate or actual amount is notified more than 24 months after an outgoing has been incurred. Management expenses must be reasonable and reasonably incurred.

• **Insurance** – The default position for loss of rents cover has increased from 12 months to 24 months, which will likely impact the cost of outgoings payable by the tenant. The default sum of the excess has increased from \$2,000 to \$5,000 plus GST. The lease provides differential treatment for recovery of the excess based on whether the tenant is at fault or not. Where the landlord makes a claim on its policy and the tenant is not at fault, the tenant will be liable for its proportion of the excess as an outgoing (subject to the specified cap). Where the tenant is at fault, it will be liable to pay the excess up to the specified cap. However, despite the parties agreeing a cap, the cap can increase if the excess under the landlord's policy increases as a result of the tenant's fault.

• **No access in emergency and abatement of rent and outgoings** – There is more flexibility for the parties to agree upfront on what is a "fair proportion" of rent and outgoings to abate where the tenant is unable to access the premises due to an emergency. However, the parties need to be aware the default abatement option in such circumstances is 50% of both rent and outgoings, and that 50% may not be fair for all potential scenarios in which inaccessibility may arise. The parties may, within a specified period following any particular emergency that results in inaccessibility (commencing 20 working days after the inaccessibility begins and expiring three months after access is restored), review whether the agreed proportion is in fact a fair proportion in the circumstances – for that particular emergency only. In doing so, the parties must review the relative effect on each party's position (not just that of the tenant) as a result of the application of the abatement provisions and the tenant's inability to gain access.

• **Security for tenant's obligations** – The lease now includes extensive provisions for tenants to provide bank guarantees and rental bonds either in addition to or instead of personal guarantees.

• **Compliance with laws** – Reciprocal obligations are included for health and safety, including consultation and coordination and notification of notifiable events, but there is still no reciprocal general requirement for a landlord to comply with all other laws. The landlord no longer has the right to terminate the lease if it considers upgrade or improvement costs that are required by statute or an authority are unreasonable.

• **Yielding up, reinstatement, removal and make good** – There has been a reorganisation of these provisions, which are now in one clause. However, the fundamental position has not changed – full reinstatement, removal and make good obligations still apply with no option for a lesser obligation.

• **Partial or total destruction** – A number of changes have been made to these provisions, including

that the landlord must spend the insurance money it receives plus an amount equal to the applicable insurance excess in reinstating the premises. Where the lease is terminated under these provisions, the landlord cannot require the tenant to remove its fixtures, fittings and chattels, but if the tenant does do so, it must make good any resulting damage.

- **Seismic rating** – A seismic clause is now included, but it has no real teeth. There is an option for the parties to record the assessed (rather than required minimum) seismic rating of the building in the first schedule. The provisions assume the landlord has provided the tenant with a report or other information that assesses the seismic rating and include a requirement that the landlord provide any report or other information that the landlord becomes aware of that contains a materially different assessment. However, the landlord does not give any representation or warranty as to seismic rating or performance of the building, and there are no consequences if the building is found to have a different seismic rating. Parties will need to amend the lease as appropriate in the circumstances if they wish to change the operation of these provisions.

- **Mortgagee consent** – A prudent tenant would amend the previous version of the lease to require a landlord to obtain consent to protect its position against a mortgagee taking possession of the premises. This is now one of the variable options to be completed in the first schedule.

The above are key changes only. There are a number of other changes that also require consideration and comment when using these forms. We can help navigate the changes. Please reach out to one of our team below for advice on how the new lease could impact your leasing transactions either as a landlord or a tenant. Clicking on their name below will take you through to their profile on our website where you will find their contact details.

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