

## 8. SHIRLEY COMMUNITY CENTRE - LEASING

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The purpose of this report is to advise the Board how leases are currently entered into at the Shirley Community Centre and whether there should be a change to the current method of leasing this facility.

### INTRODUCTION

The Shirley Community Centre is situated on the former Shirley Primary School land at 10 Slater Street. The land is vested in the Council as a local purpose reserve for a community centre.

### BACKGROUND

In May 1978 the then Secretary and Associate Town Clerk wrote to Mr I Finlayson, President of the Shirley Community Centre Society Inc. advising *“That the Council has been notified of the intention of the Minister of Lands to make the old Shirley School available as a reserve for Community purposes and that the Council could assume full control of the site. In a subsequent meeting between Council officers and your Association on Thursday 10 November 1977, it was agreed that your committee should take administrative control of the Community Centre on the Council’s behalf and that interim use begin, pending the renovations and agreed strengthening of the building.”*

Since this date the Society has carried out the administrative function, and has also been entering into leases recording the Shirley Community Centre Incorporated as the landlord. Given that the Council is the landowner, it is not legally possible for the Society to enter into deeds of lease in this way. Accordingly, the Council needs to consider how it would like its leasing arrangements managed at the Shirley Community Centre. There are several options, the most practicable of which are set out below.

This report talks about leases, but licences may also be granted in respect of the Shirley Community Centre. This report, although referring only to leases, applies equally to licences.

### Option 1

The Council enters into a lease with the Shirley Community Centre incorporated, giving it the power to sublet the premises.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>The Society deals directly with the lessee and sets out the terms and conditions it sees fit for tenancy in the building.</li> </ul>	<ul style="list-style-type: none"> <li>Terms and conditions may not be compatible with Council Policy which could lead to inconsistency around the City.</li> </ul>
<ul style="list-style-type: none"> <li>Able to set the rent and negotiate the terms and conditions.</li> </ul>	<ul style="list-style-type: none"> <li>The Society will not be familiar with the Reserves Act which sets out leasing conditions for this type of land.</li> </ul>
<ul style="list-style-type: none"> <li>Establish compatibility with other lessees.</li> </ul>	<ul style="list-style-type: none"> <li>Encourages inconsistency of building management and maintenance.</li> </ul>
	<ul style="list-style-type: none"> <li>A typical sublease records that the head lessor (the Council) must give consent on certain matters, in addition to the sublessee obtaining the consent of the sublessor (the Society). Although that clause could be deleted, it does limit the Council’s control over the leased premises. For example, consent would normally be required from the head lessor and the sublessor in respect of a proposed assignment of a sublease or a change of permitted activity.</li> </ul>
	<ul style="list-style-type: none"> <li>The head lessor’s consent is usually required before a sublessor can grant a sublease to a sublessee. Again, although that clause could be deleted, it would limit the Council’s control over the leased premises.</li> </ul>

## Option 2

The current leases entered into by the Society are surrendered and new leases are drawn up by the Council Facility Assets Unit with the name of the lessor (owner) being the Council instead of the Society.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>The Council knows who has entered into leases and has a copy of the Deed document.</li> </ul>	
<ul style="list-style-type: none"> <li>Achieve consistency with leases through the Council.</li> </ul>	<ul style="list-style-type: none"> <li>The Council is unaware of whether a new lessee is compatible with the existing tenants.</li> </ul>
<ul style="list-style-type: none"> <li>Aware of the legal implications involved in dealing with leasing arrangements on Reserves.</li> </ul>	<ul style="list-style-type: none"> <li>The Society's input into leasing is highly valuable. Staff believe that this option would unduly restrict the Society's involvement in leasing matters.</li> </ul>
<ul style="list-style-type: none"> <li>Any disputes, the Council are able to clearly sort out any legal implications.</li> </ul>	
<ul style="list-style-type: none"> <li>Other Units within the Council are aware the Facility Assets Unit deals with leasing.</li> </ul>	
<ul style="list-style-type: none"> <li>Changes in the Council policy. Facility Assets Unit able to respond to these changes. ie Asset Management Plan is carried out. This will affect every lease.</li> </ul>	

## Option 3

A joint arrangement whereby The Shirley Community Centre Society Inc negotiates the terms and conditions of the lease, subject to approval by the Council. The Facility Assets Unit would provide the Society with a form of lease that incorporates various standard clauses used by the Council, and records the Council as landlord. The present leases would be surrendered and a new leases entered into:-

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>Both parties agree to the terms and conditions of the lease.</li> </ul>	<ul style="list-style-type: none"> <li>This process will take a little longer, although this could be minimised if the Council gave delegated authority to the Council's Facility Assets Manager to sign leases in respect of the Shirley Community Centre up to a maximum period of 5 years.</li> </ul>
<ul style="list-style-type: none"> <li>Consistency within the Council in dealing with leases.</li> </ul>	
<ul style="list-style-type: none"> <li>The lease will be entered into in the name of the Council (as Landlord/lessor), preventing any legal anomalies.</li> </ul>	
<ul style="list-style-type: none"> <li>Facility Assets Unit can advise Society of any changes in Council policy or law changes.</li> </ul>	

Since 1978 there have been numerous changes in legislation which affects leases (such as the Health & Safety in Employment Act) and, as the Society adapted the Auckland District Law Society's Lease Document for their leases they will not be aware of various policies and procedures that the Council has put in place as a result of recent legislation.

In 2001 Audit New Zealand carried out an audit of the Council leases and made a recommendation that the Council's Facility Assets Unit should be the party dealing with lease agreements. Since this recommendation was made, all parties entering into leases have come back to the Facility Assets Unit for input. **(See attachment 1).**

## CONCLUSION

The General Manager Regulation and Democracy (Peter Mitchell) has advised the Facility Assets Manager (Rob Dally), that the Council cannot delegate its powers to lease the Community Centre to the Shirley Community Centre Society Inc. and therefore the Staff would recommend option 3.

**Staff****Recommendation:**

That the Council:

1. Adopt option 3.
2. Grant delegated authority to the Council's Facility Assets Manager to approve in consultation with the Shirley Community Centre Society Inc., any leases or licences of the Shirley Community Centre for a term not exceeding five years (including all renewals).

**Chairperson's****Recommendation:**

That a Board representative be included in the consultation process.