



## DS 1.3 – Buildings on Council Land

### 1.0 Introduction

Buildings on land that is currently vested in the Shire of Collie or owned freehold by the Shire have come to the Shire through a variety of routes.

Community groups have built buildings on Shire vested land, with or without an associated lease arrangement. In a few cases it appears that informal arrangements were agreed by both parties but written records cannot be found. Where leases do exist, there is no consistency between the leases and some are more detailed than others, making building asset management unnecessarily complex. Some buildings were developed and leased by community groups that no longer exist.

The Shire has accepted Management Orders for reserves that used to be managed by others and contain buildings built by others (e.g. the Railway Institute building). In some cases those buildings may no longer be needed, and contain building products that are no longer acceptable (e.g. asbestos insulation).

Buildings have been built by the Shire for a range of purposes including community halls, shire depots etc. In some cases the buildings are old and no longer required (e.g. Buckingham Hall).

Whilst informal arrangements may have worked well for many years, in the context of recently developed asset management principles and an increasingly litigious society (i.e. people suing if injured in a building) it is now necessary to formalise in some detail responsibilities for building asset management and maintenance, and responsibilities for compliance with retrospective building legislation.

In 2007 consultants for the Shire of Collie prepared the first Building Asset Management Plan (the 2007 asset management plan), which acknowledges that it “*is the first stage in documenting management practices, processes and strategies for Council assets*” and identified the building asset management planning process as an “*ongoing process*”. Since 2007:

- The Institute of Public Works Engineering Australia (IPWEA) has published a *Building Condition & Performance Assessment Guidelines Practice Note 3* which identifies best practice for building asset management;
- A number of other local governments have developed their own standard lease documents so that responsibilities are clearly defined and building asset management is less complex;
- A number of buildings have been identified on Shire vested land that are not in the 2007 asset management plan;
- Since 2007 several leases have expired and
- Some significant discrepancies in the 2007 asset management plan have been found. For example, for several buildings the plan identified that the residual current devices should be cleaned regularly, but subsequent inspections have found there are no devices to clean.

The former policy DS 1.5 lacked sufficient detail to achieve the revised policy objective.

### 1.1 Objectives

- a) To provide a framework that identifies responsibilities for building management and to guide building asset management planning.
- b) To maximise consistency of lease arrangements.
- c) To ensure all new building additions and upgrades take Council's Strategic Plan goals of energy and water efficiency and inclusive access into account.

## 2.0 **Legislative Framework**

Under the *Land Administration Act 1997* the Minister for Lands can place land under the care, control and management of the Shire of Collie to be used only for a specified purpose or purposes. The Minister may also confer on the Shire the ability to grant a lease, sublease or licence over the whole or any part of the reserve. This information is detailed in a Management Order for the land.

The Shire can use the land or permit activities or buildings to be constructed on the land in a manner consistent with the Management Order.

Any buildings constructed on land that have a Management Order in the Shire's name are the responsibility of the Shire, except for periods when they are leased or licensed to other users. Management Orders rarely permit leases to exceed 21 years.

Buildings are subject to a raft of legislation designed to ensure occupant safety and to protect public health. Examples of building legislation include:

- the *Health (Public Buildings) Regulations 1992* regulate matters such as signage of exit routes out of buildings in case of emergency, the maximum number of persons that may be in a public building, fire prevention (e.g. use of non-toxic fire retardant materials is required), stairway design, and general maintenance;
- the *Local Government (Miscellaneous Provisions) Act 1960* applies the *Building Code of Australia* to all new construction works (including building additions); and
- the *Food Act 2008* and the associated regulations and Codes of Practice identify requirements that affect the standard of kitchen facilities for food preparation if food is being sold.

Building legislation is occasionally retrospective requiring existing buildings to be modified to achieve compliance. A recent example of this is the requirement for Residual Current Devices to be fitted to all public buildings.

Unless a building on land with a Management Order in the name of the Shire of Collie is leased and the lease identifies responsibility for compliance with a particular aspect of building legislation as responsibility of the lessee, then it could be held that the Shire is responsible for compliance.

Where a Management Order identifies the Shire of Collie as being responsible for the care, control and management of a parcel of land, this policy refers to that land as being vested in the Shire of Collie.

### **3.0 Council's Corporate Business Plan 2012/2013 – 2016/2017**

Council's Strategic Plan seeks to incorporate environmentally friendly initiatives into Council's facilities, with a focus on reducing greenhouse gas emissions by maximising energy efficiency and the application of measures to achieve water conservation. The Strategic Plan also seeks to incorporate disability access & inclusion philosophies into all its assets.

### **4.0 Application of Policy**

This policy applies to all buildings on land held freehold or vested in the Shire of Collie used to achieve not-for-profit community outcomes.

This policy does not apply to the lease of buildings for commercial purposes.

### **5.0 Policy Provisions**

#### *4.1 Volunteer Bush Fire Brigade Buildings*

4.1.1 The cost of buildings and building maintenance for Volunteer Bush Fire Brigades is covered by the Emergency Services Levy.

4.1.2 Where the land is vested or owned freehold by the Shire, the Shire will include the building in its building asset management plan to identify maintenance costs that can be used for budget submissions to Fire and Emergency Services Authority (who administer the Emergency Services Levy).

#### *4.2 Leases to be Established*

4.2.1 Where a building on land vested or owned freehold by the Shire is occupied for the exclusive use of a community group and no lease is current, a standard lease consistent with this policy should be negotiated as soon as practicable.

4.2.2 If existing building user group is not able to form a suitable incorporated body or company, or identify an individual to take responsibility for a lease then the building and its care, control, and management will have to revert to the Shire of Collie.

#### *4.3 Leases to be Negotiated or Re-negotiated Based on Standard Lease Agreements*

4.3.1 Leases should be negotiated or re-negotiated based on standard lease agreement developed in accordance with this policy for all buildings on Shire owned or vested land that provide for exclusive use of members of a club or a community group.

4.3.2 Other than for new buildings, or in cases where the future of a building is uncertain, future leases and lease renewals should be for a period of five years with an option for a further five years. Such leases should be treated as a Long-term lease (see Section 4.4 below) for the purpose of this policy.

4.3.3 The standard lease agreement is to include a range of standard clauses including but not limited to clauses that provide for:

- Annual Council inspection of the premises to demonstrate compliance with the Health (Public Building) Regulations 1992; and
- Building improvements and modifications (including to the building surrounds) to be approved by the Shire.

4.3.4 In the case of entering a lease agreement with a commercial or government organisation, all costs associated with establishing and registration of the lease agreement will be the responsibility of the lessee.

4.3.5 In the case of entering a lease agreement with a not for profit community based organisation, Council will meet 50% of the costs associated with establishing and registration of the lease agreement.

#### 4.4 *Standard Lease Types*

Standard leases are to be developed for each of following situations:

4.4.1 *Community built and operated.* This lease applies to circumstances where a community group has built a building on Shire land and effectively has exclusive use.

4.4.2 *Long-term lease:* This lease applies to leases of 10 years or more, and circumstances where Council has inherited or built a building which is then leased to others. It includes leases of five years with a five year option.

4.4.3 *Short-term lease:* This applies to leases of less than 10 years.

4.4.4 *Licence:* Permits groups to utilise premises for relatively short periods of time. Usually has a short termination period.

#### 4.5 *Responsibilities for each standard lease type*

Table 1 identifies responsibilities for each standard lease type

### **Policy Adoption and Review**

Council meeting held:	17 June 2014
Adopted by Minute No:	6433
Date to be reviewed:	June 2018
Previous Revision:	Nil

**Table 1- Responsibilities for Each Standard Lease Type**

Issue	Responsibility			
	Community Built and Operated	Long Term Lease	Short Term Lease	Licence
<b>Building insurance</b>	Lessee	Shire	Shire	Shire
<b>Vandalism damage to building (assuming no negligence on lessees part)</b>	Building insurance excess Lessee	Building insurance excess shared equally between Lessee and Shire (\$500 each as at November 2010).	Building insurance excess shared equally between Lessee and Shire (\$500 each as at November 2010).	Shire
<b>Contents insurance</b>	Lessee	Lessee	Lessee	Lessee
<b>Public liability insurance of \$10m</b>	Lessee	Lessee	Lessee	Lessee
<b>Compliance with <i>Health (Public Building) Regulations 1992</i></b>	Lessee	Lessee	Shire	Shire
<b>Upgrades required by legislative changes</b>	Lessee	Lessee	Shire	Shire
<b>Building additions and alterations</b>	Lessee must obtain Shire approval and comply with Building Code of Australia.	Lessee must obtain Shire approval and comply with Building Code of Australia	Lessee must obtain Shire approval and comply with Building Code of Australia	Lessee must obtain Shire approval and comply with Building Code of Australia
<b>Major maintenance</b>	Lessee	Shire	Shire	Shire
<b>Minor maintenance and cleaning</b>	Lessee	Lessee	Lessee	Lessee
<b>Security system and response</b>	Lessee	Lessee	Lessee or Shire	Lessee or Shire
<b>Payment of utility charges (power, water)</b>	Lessee	Lessee	Lessee	Lessee
<b>Payment of Emergency Services Levy</b>	Shire	Shire	Shire	Shire