



HEPBURN SHIRE COUNCIL

POLICY NUMBER: 9

COUNCIL OWNED AND CONTROLLED POLICY

Adopted: January 1997

PROGRESSIVE ORGANISATIONS HAVE GOOD POLICIES

Policies help organisations and the public to better understand an organisation's priorities and where it is heading. Hepburn Shire Council is committed to developing and maintaining a comprehensive set of policies to guide the organisation towards a better future.

Policies are regularly reviewed and staff input is actively sought in this process. Community input is sought for those policies which have a major public focus.

Comments are also welcomed after policies have been adopted to assist in their continuous review and improvement.

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DATE LAST AMENDED:

DATE OF NEXT REVIEW:

DATE POLICY LAPSES:

REFERENCES: Hepburn Shire Council Corporate Plan 1996-98

THIS POLICY

This policy has been prepared to provide for the equitable management of council owned and controlled property to ensure sufficient use of council property as well as equity in its use, maintenance and development.

INTRODUCTION

- 1.1 The Council is able to purchase, sell and lease real property.
- 1.2 The Council is responsible for a range of property types as:
 - an owner;
 - holder of various crown grants;
 - a government appointed committee of management; and
 - a lessor.
- 1.3 Conversely, the Council, for management of its properties, is able to:
 - appoint committees and delegate functions, duties and powers to them;
 - may offer short or long term leases to individuals, groups or corporate bodies;
 - retain and maintain direct administration and control;
 - relinquish any restrictive crown grant or committee of management role;
 - sell any owned property, surplus to its needs.
- 1.4 The Council's goal for property is to deliver responsible resource management, supported by effective financial business strategies.

Policy Objective

- 2.1 To establish a basis for:
 - managing council owned and controlled property through committees or lease arrangements;
 - appointment of committees;
 - monitoring the performance of committees and lessees;
 - financial assistance to committees or lessees.
- 2.2 To ensure sufficient use of council owned and controlled property as well as equity in its use, maintenance and development.
- 2.3 To encourage committees and lessees to be self sufficient in their management of council property.

- 2.4 To encourage broad community use of council property, as distinct from single purpose use or exclusive occupancy by any one group.
- 2.5 To establish that the Council will in the best interests of the shire community, regularly monitor and review its property portfolio.

Interpretation

Terms and words used within this policy document.

- 3.1 **Committee** - a committee whether advisory or a special committee in accordance with S86 of the Local Government Act 1989.
- 3.2 **Council Owned Property** - real property to which the Council has title whether:
 - (a) in fee simple estate;
 - (b) by possession;
 - (c) a restrictive crown grant;
 - (d) a restrictive, in fee simple crown grant; or
 - (e) an in fee simple crown grant.
- 3.3 **Council Controlled Property** - real property in which the Council has a major and controlling interest whether through:
 - (a) a lease;
 - (b) as committee of management under the Crown Land (Reserves) Act 1978;
 - (c) some other grant, demise, gift, benefit or bequest; or
 - (d) specific legislation or law enacted by the parliament.
- 3.4 **Council Property** or **Property** - includes vacant land, reserves, parks, ovals, buildings, structures, springs and anything attached.
- 3.5 **Management** - the maintenance, hire, control, operation, occupancy, use, conservation and development of property.

Means Of Management

- 4.1 The Council acknowledges and accepts it has, in equity, responsibility for council owned and controlled property.
- 4.2 For management of any council owned or controlled property, the Council, may:
 - retain and have direct control and administration;

- under S86 of the Local Government Act 1989 appoint committees and delegate management responsibility;
 - enter into a lease under S190 of the Local Government Act 1989 or the provisions of the Crown Land (Reserves) Act 1978 with any person or incorporated body.
- 4.3 The Council will determine at its absolute discretion whether it appoints a committee, enters into a lease, or retains its own control for management of property.
- 4.4 A lease will only be considered to an individual or when there is an incorporated body which will occupy a property. (Unincorporated groups will not be considered for leases.)
- 4.5 A special committee when appointed, in effect, operates as the Council so far as its delegated authority is concerned.

Delegation & Leases

- 5.1 When delegating or leasing to a committee, the Council will:
- establish the purpose of the committee;
 - determine what the committee should do to meet the purposes (functions, duties and powers);
 - clearly establish what is expected;
 - be consistent in requirements for each similar property;
 - be sufficiently broad to allow the committee to operate without undue restriction or constant reference to the Council;
 - acknowledge specific differences between one committee and the next e.g. an arts centre may need a specific power not required by a football/cricket ground committee.
 - state the Council's obligations.

NB: As an example refer to Appendix 1.

- 5.2 When providing a delegation to a committee, the Council may state rules for -
- meeting and other procedures of the committee;
 - accounting procedures;
 - reporting procedures;
 - limiting the committees authority.

NB: As an example refer to Appendix 2.

Appointing a Committee

- 6.1 To appoint a committee, the Council is bound by the provisions of S86 of the Local Government Act 1989.
- 6.2 Where a property is clearly used by the community as distinct from a single purpose or use, the following process will be used to appoint its membership:
- (a) resolve to establish a special committee and allocate a name to the committee;
 - (b) determine that the committee will have a membership of between three and nine people and at the same time decide if any of the membership will be Council members or staff;
 - (c) advertise broadly in the community -
 - (i) the Council's decision to establish a committee;
 - (ii) outlining the purpose of the committee e.g. to manage and operate the XYZ facility;
 - (iii) seeking written nominations, either personally or by others with the nominee's consent, for appointment to the committee;
 - (iv) that nominations should outline the nominee's experience, interest in the matter, and any expertise that might be available to the committee;
 - (v) stating the period of appointment - up to three years but eligible for re-appointment;
- NB: In some cases a committee may be established for a specific purpose and appointment maybe until that purpose is complete then the committee is dissolved.*
- (d) advertising will be for at least two weeks, after which the Council will consider the nominations and make appointments by resolution. At this point, the Council may appoint one of the members to be the committee chairperson. It will nominate a member of staff to be responsible to gather members of the committee together for its first meeting;
 - (e) notify the nominees of their appointment or that they were unsuccessful;

Appointing a Committee cont

- (f) if there are insufficient or inappropriate nominations, the Council will select as it sees fit, persons to appoint.
- 6.3 Determine if members (except councillors) are to be exempted from submitting a primary or ordinary return for pecuniary interest purposes.
NB: Even if a committee member is exempt from submitting a return, he or she must still declare any direct or indirect interest in any contract or proposed contract as provided by S79 of the Local Government Act 1989.
- 6.4 Determine that a committee's financial year will end on 30 June.
- 6.5 Immediate notification must be given to the Council of any committee vacancy that occurs.
- 6.6 Where a vacancy occurs during the life of a committee, the Council will arrange for an appointment, either by advertising as above or making a direct appointment. Any person recommended by the committee for appointment to a vacancy would be considered.

Leasing

- 7.1 A property may be leased, subject to the provisions of S190 of the Local Government Act 1989, or if the property is crown land for which the Council is committee of management, subject to S17 of the Crown Land (Reserves) Act 1978.
- 7.2 Where it is proposed that any council property be leased, the Council will first review the need to retain its ownership or control of that property.
- 7.3 If a property will primarily be used for a commercial purpose, or has commercial potential, or is designed for a use which competes within a specific commercial market (housing), rental and conditions will be set according to prevailing market values. Any variation to this policy must be properly justified, fully recorded and acknowledged.
- 7.4 As in any delegation, the obligations of the Council and lessee will be laid down.

- 7.5 Lessees will normally be existing community occupier bodies and which must be incorporated under the Associations Incorporation Act 1981. In some instances, leases will be to individuals, e.g. a commercial use property - shop, a vacant rural land reserve which adjoins a farm property. In these instances, the Council may 'tender' the property. Depending on the lease term, retendering will normally take place at a maximum of nine years, e.g., a three year lease may contain two further terms after which a retender process will occur.
- 7.6 Lessees will be expected to enter standard council leases, but which contain conditions, where necessary, to cover any specific requirement for a property.
- 7.7 Lessees must hold public liability insurance with a minimum cover of \$5M.
- 7.8 Generally a lease, while having standard conditions, may vary in term and be specific to individual properties.

Financial Assistance

- 8.1 The Council will provide limited financial assistance to committees - including committees of management appointed under the Crown Land (Reserves) Act 1978 to manage crown land - to be used for general operating and maintenance costs.
- 8.2 The level of financial assistance may vary and committees/lessees with demonstrated self help abilities are preferred. A further consideration is the Council's own budget constraints and priorities.

Financial Assistance

- 8.3 As a minimum financial contribution to committees:
 - the Council will provide a minor maintenance contribution of \$200 (reviewed annually) to each of the following (public) hall committees:

Bullarto	Franklinford	Lyonville
Campbelltown	Glenlyon	Mollongghip
Clydesdale	Kingston	Trentham
Dean	Leonards Hill	Yandoit
Drummond		

In addition, the Council will provide insurance cover for the building and contents for each of the above halls;

- the Council will provide in each annual budget, at least \$10000 (reviewed annually) to which every committee or lessee (non commercial) of council owned or controlled property may, during February each year, make a submission for a proportion of to be used toward specific maintenance tasks in the next financial year.

8.4 When determining assistance to a committee, the Council will evaluate:

- is the property owned by the Council or is it crown land;
- the type of assets established on the property;
- the general condition of any assets;
- the expectations placed upon a committee for maintenance and development of those assets;
- the overall significance and benefit of the property/project to the Shire and broader community;
- the historical status of the property and whether the project meets and/or enhances conservation policy/values;
- the potential of the property/committee to generate income;
- a demonstrated capacity (self help) to contribute toward successful operation of the property;
- the level of 'local' contribution toward a project;
- whether an allocation will improve the viability of the property;
- whether any allocations were received within the prior three years;
- whether there is any existing debt to the Council;
- whether a development project would duplicate facilities which already exist in the immediate neighbourhood.

8.5 Where any emergency arises e.g. natural disaster, requiring maintenance, the matter will be considered bearing in mind all circumstances prevailing at the time.

Major Maintenance / Development Fund

9.1 Any committee or lessee (non commercial) may at any time, make a submission for assistance to fund major maintenance tasks. Submissions will be considered on their merits at the next annual Council Budget.

9.2 The Council will establish over three financial years from 1997, a separate fund (revolving fund) of at least \$50,000, from which

committees or lessees may apply to borrow amounts to undertake major maintenance or development works.

- 9.3 Before making any allocation, the Council will evaluate each proposal using the points listed in clause 8.4 of this policy.
- 9.4 Base conditions applying to loans from this fund:
- maximum allocation \$15,000;
 - interest fixed at no less than inflation rate at time of allocation;
 - maximum term of loan five years;
 - repayments to be quarterly commencing six months after funds advanced;
 - issue of any statutory permits, licences or approvals;
 - no use of funds on any other work;
 - any unspent funds to be returned to the revolving fund;
 - a signed agreement to repay the funds and acknowledge conditions;
 - a report within one month of project completion.
- 9.5 The Council will return all loan repayments and interest to its revolving fund.
- 9.6 Fund allocations are at the Council's discretion and any allocation in no way implies an ongoing funding commitment by, or obligation on the Council.

Insurance

- 10.1 Each council property must be insured for full replacement/reinstatement value.
- 10.2 For 1996/97, those council properties listed on the Council's Industrial Special Risks (ISR) insurance schedule will remain, but committee or lessees (non commercial) will be assessed a proportion of premium viz:

$$\text{Premium} = \frac{\text{Building Insured Value}}{\text{Total Building Asset Value}} \times \text{Total}$$

(As a guide, this insurance cost will be in the order of \$210-220 per \$100,000 of insurance value.)

- 10.3 Some committees/lessees already insure direct the properties they occupy. They have the option of continuing, provided cover is for full replacement/reinstatement value, or being included under the Council's ISR policy as in 10.2 above, provided the Council has an insurable

interest in the property. In terms of continuing direct insurance, Council's assistance to arrange separate cover through Jardine Australian Insurance Brokers Pty Ltd can be sought. Jardine is able to offer specialist insurance for local community assets at competitive rates. As a guide, this direct insurance cost will be in the order of \$520 per \$100,000 of insurance value.

- 10.4 Public Liability - minimum \$5M cover - must be held. Cover is automatically available to committees appointed by the Council, but each committee may be apportioned an amount as a contribution toward premium, the amount to be as set by the Council's Risk Manager, considering use and type of property.
- 10.5 Committees of management of crown land must provide proof of being part of the State Government's bulk liability policy.

Monitoring Performance

- 11.1 The performance of all committees and lessees in respect of their management of council property will be monitored.
- 11.2 This is necessary to enable the Council to gauge if:
 - any assistance is required by the committee or lessees;
 - any corrective action is needed;
 - funds provided are being used as required or directed;
 - to assess any complaints that may be brought to the Council;
 - simply as good management practice by the Council.
- 11.3 The Council will provide clear direction on its expectations of performance, e.g. maintenance standards for buildings are likely to be set and will be required to be followed.
- 11.4 The Council will require within three months of a committee's appointment or a lease being signed:
 - submission of a three year maintenance program for a property;
 - an outline of how this program will be met;
 - submission of a three year budget;
 - schedule of user charges.
- 11.5 At least once annually after 30 June and before 31 July:
 - submission of a report outlining the committee's achievements, failings and details of any planned projects not finished. (This report should also compare and comment on how the three year maintenance program has been met.);

- a financial statement.

11.6 Reporting may be more frequent for those organisations with substantial budgets.

11.7 By 28 February each year an annual budget will be submitted, together with a listing of user fees and charges which reflect operating and maintenance requirements for the particular council property.

Appendix 1

Delegation - an example of the purpose for establishing a special committee for an arts centre/museum.

TO PROMOTE CO-ORDINATE AND DEVELOP THE ARTS (IN THE WIDEST SENSE) INCLUSIVE OF HISTORIC AND MUSEUM UNDERTAKINGS AND in relation to the purpose, the Committee:

1. Will formulate and adopt goals, objectives, forward plans and policies ensuring adequate and proper research in relation to needs and cost-effectiveness.
2. Will consistently pursue adopted goals, objectives, forward plans and policies.
3. Will carry out any research investigation survey or inquiry.
4. May mount exhibitions, displays, events and activities.
5. May provide training and tutoring classes.
6. Will manage, maintain and be responsible for the Council's premises (including fences).
7. May rent, lease or similarly acquire other premises for its purpose.
8. Must set conditions, fees and charges for use of any premises for exhibitions, displays, events and activities for which it is responsible.
9. Will manage, maintain, repair and insure all works of art, artefacts, exhibits, displays, events and activities.
10. Must account for its financial operations.

Appendix 2

Matters and rules the Council may provide:

Functions

- maintain the reserve/buildings to agreed standards;
- set fees and charges for use of reserves/buildings, always subject to Council approval;
- promote and hire out the facility;
- maintain the facility for the public - keep it open - and not allow exclusive use;
- report (at set periods) on its activities to the Council;
- requirement to submit (in advance) maintenance and other programs;
- insurance;
- be income generating.

Limitations

- not to borrow;
- not to exceed a given expenditure level;
- not to exceed a stated contract level.

Termination

- Note the Council's authority to alter or revoke the delegation or remove the committee at any time;
- Procedure to deal with cash funds investments or other tangible items when committee is finished.

Indemnity

- provide committee members with appropriate indemnity.

Rules Relating to Meetings of Committees

The following could be included in a delegation or incorporated as a separate document.

- | | | |
|-----|--------------------------|---|
| 1.0 | Membership | <ul style="list-style-type: none">- as appointed by Council.- provision for removal/resignation.- office bearers - Chairperson, Secretary, Treasurer.- election of office bearers.- exemption from being required to submit a primary or ordinary return for pecuniary interest purposes. |
| 2.0 | Meetings | <ul style="list-style-type: none">- number of times annually or specified intervals.- place determined by Committee or as directed by Council.- quorum, adjournment.- notice of meetings and meetings to be open.- rules of debate. |
| 3. | Annual Meeting | <ul style="list-style-type: none">- to be conducted or not.- when. |
| 4. | Attendance at Meetings | <ul style="list-style-type: none">- open to the public (unless closed for allowed purpose).- members must attend unless reasonably prevented.- missing of meetings - loss of membership.- requirement to declare any pecuniary interest. |
| 5. | Chairperson | <ul style="list-style-type: none">- to chair meetings.- acting chairperson. |
| 6. | Duties of Office Bearers | <ul style="list-style-type: none">- to give notice of meetings.- arrange for keeping of minutes.- receipt of pecuniary interest declarations. |

Appendix 2

Alternatively the Council may decide to determine that a committee fixes its own rules for conduct of its meetings.

Rules Relating To Accounting By Committees

1. Conform with Council requirements established by the Council - AAS27 as applicable.
2. Require books to be kept in accord with 1 above, with regular entry of amounts received and paid.
3. Receipt and bank money into the committee's bank account (as approved by Council) within certain time.
4. Drawing of cheques for payment and approval of accounts by the Committee.
5. Investment of surplus funds - who does.
6. Treasurer to prepare monthly financial reports for the committee and an annual financial report for the Council.
7. Audit of accounts.
8. Require access to accounts by the Council and their incorporation into the Council's accounts.
9. Submission for Council approval user fees and charges.
10. Financial year ends 30 June.