

INTELLECTUAL PROPERTY POLICY

QUALITY CONTROL			
EDRMS REFERENCES	12/114 – D15/7452		
RESPONSIBLE POSITION	General Manager		
APPROVED BY			
REVIEW DATE	September 2027	REVISION NUMBER	2
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1. INTRODUCTION

The intellectual property (IP) of Broken Hill City Council is an asset. *IP has many of the same ownership rights as physical property and needs to be managed responsibly, in the same way Council manages its tangible assets, such as its finances, buildings, infrastructure and the environment.*

This policy has been introduced to manage, protect, share and commercialise Intellectual Property within Broken Hill City Council.

2. POLICY OBJECTIVE

Broken Hill City Council owns, controls and manages all intellectual property (IP) that it has created or acquired. All staff, contractors and consultants have a responsibility to properly identify, attribute and preserve the IP of Broken Hill City Council.

The two main types of IP owned by BHCC are:

- Copyright, including website content, multimedia, written materials; and
- Registered and Unregistered trademarks, including brand names, logos, tag lines and other insignia of origin.

The purpose of this policy is to ensure that IP is managed professionally, protected, shared and commercialised where appropriate.

3. POLICY SCOPE

This policy applies to all activities of Broken Hill City Council and to all Councillors, staff, consultants, contractors or other appointees of Council taking part in such activities.

The personal records of Councillors and former Mayors and Aldermen are not considered Intellectual Property for the purpose of this policy.

4. POLICY STATEMENT

This policy is intended to apply to all IP created in or during the course of employment or engagement with BHCC and includes IP created while participating in any project or program supported by funding obtained or provided by or through BHCC.

BHCC is committed to ensuring the community of Broken Hill have the best opportunity to benefit from the IP through effective management, protection, sharing and commercialisation Intellectual Property.

4.1 Staff And Intellectual Property Rights

BHCC owns, controls and manages all IP created by BHCC staff pursuant to the terms of their employment or otherwise created under the direction or control of BHCC.

Any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee in the course of employment with BHCC is the sole property of Council and Council will unless otherwise agreed have the exclusive right to use, adapt, patent and otherwise register it.

BHCC staff employed or otherwise engaged outside of this organisation cannot use BHCC IP as part of this employment or engagement unless permission has been granted in writing by the General Manager or his/her delegate.

The employee will immediately disclose to the General Manager any literary work, computer program, invention, design, patent, copyright, trademark, improvement or idea developed by the employee after their commencement date to enable the General Manager to ascertain whether it was discovered, developed or produced wholly outside and wholly unconnected with the course of employment under this contract.

To protect disclosures made by employees, the General Manager or the employee may require a confidentiality agreement to be signed prior to, during or immediately after discussion of the intellectual property being considered.

4.2 Consultants, Contractors And Agency Staff And Intellectual Property Rights

Where BHCC engages any contractor or consultant, and that contractor or consultant creates any IP (including copyright) as part of that engagement, then there must be a written agreement which clearly sets out that BHCC owns this IP.

Any such agreement must also address the issue of sub-contractors being engaged and the ownership of any IP created. This also applies to individuals employed by BHCC through an agency.

4.3 Other Appointees Or Persons And Intellectual Property

IP may be created and owned by persons or organisations not engaged by BHCC in an employment or contractor/consultant relationship, for example:

- committee and board members;
- students on voluntary placements within BHCC, or who receive a nominal
- payment, scholarship or sponsorship; and
- visitors and volunteers.

Whenever BHCC enters into an arrangement with any of the above or agrees to provide services to another party that may result in the creation of IP, there must be a written contract that deals with the relationship and addresses the ownership of any IP created and imported background IP.

Otherwise the other party might claim sole ownership of the IP, notwithstanding that BHCC paid for its development.

Exceptions - BHCC Ownership Of Intellectual Property

There may be situations arise whereby BHCC ownership is not necessary or desirable and it will be more useful or valuable for BHCC to allow third parties to own IP under negotiated arrangements. Ensuring that the BHCC has the right to use the IP for its own internal purposes may be sufficient.

In asserting and negotiating BHCC ownership or rights to use particular IP, the following consideration should be made:

- the purpose of the ownership (i.e. whether it is necessary or desirable for BHCC to own the IP having regard to its internal use, knowledge transfer and commercialisation requirements);
- in the case of contractors, the nature of the services, the other terms and conditions of the contract, how the IP arrangements may impact on the project cost, and ongoing cost to BHCC;
- in the case of joint ventures and cooperative projects, any background IP and other resources brought to the project by the participating parties, any further developments to be made or funded by each party and their respective capacities and opportunities to leverage the developed IP for broader application;
- the cost of protecting and maintaining the IP; and
- in the case of students, joint appointments or secondments, whether joint or a negotiated proportional ownership with the relevant university, research institution or other third party is indicated.

Under such circumstances, approval must be provided by the General Manager.

4.4 Community Use Of Intellectual Property

The General Manager or his/her delegate may approve the use of BHCC IP for non-profit community purposes where a net benefit to the community is considered applicable. In such circumstances, consideration should be given to the impact on the value of IP if such use is approved.

4.5 Commercialisation Of Intellectual Property

Any use of IP owned by BHCC must be approved by the General Manager or his/her delegate.

The preferred approach for the commercialisation of IP owned by BHCC is through assignment or licence to a third party. BHCC may licence the right to exploit IP under certain conditions for a set term.

BHCC remuneration for the assignment or licence may include upfront or deferred payments and periodic royalties.

The assignment or licence may be in return for other benefits such as information and materials exchanges or payments, equity participation in a commercialisation vehicle, collaborative agreements and other forms of remuneration appropriate to the specific case.

Any assignment or license of the IP must be legally documented and, if appropriate, should provide that BHCC can continue to use the IP for its own purposes.

BHCC may assign ownership of its IP outright to a third party under appropriate negotiated arrangements only with the approval of Council.

BHCC may also manage commercialisation of IP or enter into partnership or joint venture commercialisation models.

4.6 Copyright Ownership Statement

All published or distributed copyright material owned by BHCC must include the following copyright statement:

- © Copyright Broken Hill City Council [year]

4.7 Moral Rights

BHCC recognises the moral rights of the creators of certain works in accordance with the Copyright Act 1968. These include the right of fair attribution, and the need for work not to be altered or used in such a way that it harms the reputation of the creator. Where a creator agrees to be involved in research activities as part of a project between BHCC and an external contractor or other third party, the creator may be required to provide a written consent in respect of the creator's moral rights in relation to certain works that may be created during the project prior to work commencing.

4.8 Indigenous Cultural And Intellectual Property Rights

The heritage of indigenous people is a living one and includes items that may be created in the future, based on that heritage. BHCC recognises and will protect indigenous cultural and intellectual property rights as identified under Australian federal laws.

5. IMPLEMENTATION

5.1 Roles and Responsibilities

The following Council officers are responsible for the implementation of and the adherence to this Policy:

- General Manager;
- Manager Communications and Marketing
- Managers

5.2 Communication

The Policy will be communicated to the community and staff utilising Broken Hill City Council's Policy and Procedure Framework and Council's Business Paper process. Following adoption by Council the Policy will be made available on Council's website.

5.3 Associated Documents

The following documentation is to be read in conjunction with this policy.

- Code of Conduct
- Statement of Business Ethics
- Secondary Employment Policy

- Engagement of Consultants Procedure

Authority for implementation of this Policy is delegated by Council to the General Manager in accordance with the Local Government Act 1993.

6. REVIEW

Review of this policy will incorporate relevant legislation, documentation released from relevant state agencies and best practice guidelines.

The standard review period will be every two years from the effective date. The responsible Council officer will be notified of the review requirements three (3) months prior to the expiry of this policy.

The General Manager is responsible for the review of this policy.

7. LEGISLATIVE AND LEGAL FRAMEWORK

This policy considers Patents Act 1990, Copyright Act 1968, Trademarks Act 1995, Designs Act 2003 and Circuit Layouts Act 1989, Councils Code of Conduct and Statement of Business Ethics.

Council Officers and Councillors shall refrain from personal activities that would conflict with proper execution and management of Council's Intellectual Property Policy. Council's Code of Conduct provides guidance for recognising and disclosing any conflicts of interest.

8. DEFINITIONS

"Background IP"	shall mean IP that is already in existence at the time of entering into a contractual arrangement involving that IP and is made available by a party prior to the development of new IP or during the course of the contractual arrangement.
"BHCC"	shall mean Broken Hill City Council.
"Intellectual Property (IP)"	shall mean Intellectual Property (IP) is a term that describes the application of the mind to develop something new or original. All statutory and other proprietary rights (including rights to require information be kept confidential) in respect of inventions, copyright, trademarks, designs, patents, plant breeder's rights, circuit layouts, know-how, trade secrets and all other rights.