

PUBLIC BUILDINGS POLICY ON RISK BASED RESOURCE MANAGEMENT

This paper sets out the policy to allow Local Government to administer their public building obligations based on identified risks. The Executive Director Public Health EDPH recognises that it is not practical or logical for local government to formally approve every possible place that may be a public building. Each local government must determine the level of resources that they require to address their legislative obligations and other priorities to protect the public at places of assembly.

It is expected that this policy will apply until the definition of a public building within the Health Act 1911 is amended or replaced by the proposed new Public Health Act.

The policy has been formulated following comment received from the discussion paper titled "A New approach To Public Building Management for WA" which was released in 2005 as a result of concerns expressed by local government that the definition of what constitutes a public building was too wide and taxed local government's limited resources and increased their liability.

Although there was considerable discussion and concern expressed by local government prior to the release of the paper there was only a limited response which is taken to reflect that most local governments already manage the issues and assign resources according to perceived risks and other priorities.

The following information is provided.

1. A risk matrix based on models submitted by the Cities of Swan and Cockburn.
2. Details of buildings that are specifically nominated by regulation.
3. Details of buildings that the State Solicitor's Office suggests are not public buildings.
4. Guidance on the application of requirements for existing building stock.

The definition has been included for information.

Definition – Health Act 1911, Part VI section 173

Public Building means —

- (a) a building or place or part of a building or place where persons may assemble for —
 - (i) civic, theatrical, social, political or religious purposes;
 - (ii) educational purposes;
 - (iii) entertainment, recreational or sporting purposes; and
 - (iv) business purposes;

and

- (b) any building, structure, tent, gallery, enclosure, platform or other place or any part of a building, structure, tent, gallery, enclosure, platform or other place in or on which numbers of persons are usually or occasionally assembled,

But does not include a hospital;

Interpretation of the definition of what constitutes a Public Building

Buildings and places that meet the basic criteria established many years ago are clearly public buildings; some other types are prescribed by regulation. A public building is a place of assembly and it is irrelevant if admission fees are charged, or it is open to the community at large or is an unenclosed area.

Basic Criteria (established pre 1992)

A public building exists where the following criteria (in general terms) are met:-

1. There is an assembly of people
2. The assembly is more than a fortuitous gathering
3. The assembly is there for the same reasons and time more or less

Public Buildings specifically defined by regulation

Some public buildings are specifically prescribed by regulation, for example:-

Regulation 3 - Interpretations

Licensed Premises means:-

- a- Premises in respect of which a cabaret license as defined by the Liquor Licensing Act 1988 has been granted under that Act
- b- Premises in respect of which a tavern license, a hotel restricted license or any other kind of hotel license as defined by the Liquor Licensing Act 1988 has been granted under the Act; or
- c- A cabaret, hotel or tavern-
 - i- in respect of which a special facility license as defined by the Liquor Licensing Act 1988 has been granted under the Act; and
 - ii- in respect of which paragraph (a) or (b) does not apply.

Large Licensed Premises:-

Licensed premises having a floor area of more than 850 m²

Places not considered public buildings

Advice from the State Solicitor's Office suggests that the places below are not considered to be public buildings.

Places of work - Factories
Offices
Workshops

Retail Stores with no attractions to draw customers.

Administration areas of schools, colleges, universities.

Prisons and other similar institutions .

Public change room facilities.

Places of transit – airports, bus transit stations etc

Lodging houses.

Hospitals.

RISK CLASSIFICATION FOR PUBLIC BUILDINGS

Number of patrons attending		
More Than 10,000		40
5000 - 10000		30
1000 – 5000		20
500 to 1000 persons		15
200 to 500 persons		5
100 to 200 persons		2
Less than 100 persons		1
Less than 50		0
Entry Restrictions		
Open to general public; free or prior numbers not known, general admission		4
Function for select membership – non-related persons pre sold tickets & allocated seating		2
Private “family” function ie Birthday, Wedding etc mostly related persons		1
Crowd Dynamics		
Harsh environment crowd pushing and competition almost always occurs		15
Hostile elements – reasonable possibility of crowd pressures at some stage (Sporting fixtures etc)		7
Elderly, mobility impaired, require assistance and close supervision		4
Young children require close supervision		2
Healthy, predominantly good mobility – static crowd		0
Lighting		
Lighting dimmed or extinguished		10
Normal lighting		2
Held during the day (daylight hours) – open air or building with windows		1
Duration		
Greater than eight hours		10
Between four and eight hours		4
Between two and four hours		2
Between one and two hours		1
Up to one hour		0
Structures		
Spectator stand Temporary (score per stand)		10
Temporary facilities or one off event		5
Stage and support system - temporary - complex (score per stage)		4
Stage permanent or temporary simple		2
Marquee - Large area greater than 200m ² (multiply score by No. of marquees)		4
Marquee - Medium 55m ² to 200m ² (multiply score by No. of marquees)		2
Marquee or stall - Small Less than 55m ² in area (multiply score by No. of marquees)		1
Egress Difficulty		
Multi storey building or basement with only stair access to open space		10
2 storey building		6
Complex single storey building, multiple areas		4
Simple single storey building – one area		1
Open Air		0
Type of Use		
Pyrotechnical display (fireworks)		10
Entertainment with amplified music		10
High Risk activities – crowd interaction		2
Medium Risk activities		1
Low risk activities		0
TOTAL		
Drugs & Alcohol - Multiplier – Multiply above TOTAL		
BYO Alcohol; Alcohol is sold / provided & or illicit drug use likely		X2
Alcohol banned or traditionally consumed in moderation		X1
SCORE		

FACTOR X

Regardless of the above score there are often overriding factors that dictate the level of involvement. Some of these factors include but are not limited to the following examples.

- Proximity of toxic substances to a temporary event etc.
- Experience of public building operators or managers.
- Previous experiences from similar events or operators.

Risk Rating	Score	Likelihood	Approval	Surveillance Frequency
Low risk	0 – 11	Serious incident unlikely	Assess building plans / event application. Construction must comply. Formal approval in accordance with Council policy Provide guidance notes to operator/owner to advise building limitations and capacity. .	Inspect once every five years but continuously monitor for change of use
Medium Risk	11 – 50	Serious incident will occur at some time	Assess building plans or event application. Formal approval required. Issue Certificate of Approval. Provide guidance notes to operator/owner to advise building limitations and capacity.	Inspect annually and more frequently if warranted. Events – inspect set-up.
High Risk	50 – 100	Serious incidents known to occur at these places	Formal Approval Required – Certificate of Approval mandatory	4 inspections per year, with half of these at times of peak use. Events – inspect and monitor

Notes

All facilities should be rated by an Environmental Health Officer.

Scores are suggested and may be varied to provide a closer relationship with the actual risk.

Local government must determine which categories are addressed and the level of initial assessment and ongoing surveillance. A clear policy should be developed to indicate Council's resources and liability.

Assessment of risk should be reviewed from time to time say every 3 to 5 years.

Logic behind risk ratings

1. Numbers of Patrons attending

The number of patrons is a critical issue, the more people that attend, the greater the risk that something may go wrong.

Up to 100 people is a relatively minor risk but at 200 there is a far greater risk.

For assemblies of 1000 people there is an acute risk and all such assemblies should be subject to an approval process. Accordingly an automatic approval requirement is triggered as soon as this threshold is reached.

Numbers above 1000 are included to show degrees of risk and have a bearing on surveillance.

2. Entry Restrictions

Private family functions are considered to be relatively safe and it is not an area where regulation is preferred. However some have been uncontrolled and serious issues have occurred. Other contributing factors need to be considered before formal public building approval is required.

It is recognised that general admission, free events and those available to the general public represent a significant risk as there is no prior knowledge to determine how many may attend and it is also difficult to control them without prior seating allocations.

3. Crowd dynamics

Patron mobility, and behaviour are critical crowd dynamics issues. Where a harsh environment exists formal approval is vital therefore these activities are automatically set above the threshold to require formal approval.

4. Lighting

Places with dimmed or extinguished lighting are a high risk. Therefore the threshold is set at the level required for them to be formally approved.

5. Duration

The longer the event the greater opportunity a risk may develop.

6. Structures

Structural stability is critical and there is a greater risk applicable to a temporary structure. Therefore temporary facilities attract more points than permanent facilities.

All seating stands should be formally approved, therefore a seating stand automatically exceeds the approval threshold.

7. Egress difficulty

Basements are inherently higher risk as they do not have windows and in fire scenarios, exit is generally through the smoke layer.

8. Type of use

Type of use is critical as indicated in the Regulation 7 table and the varying space per person ratios.

9. Drugs & alcohol

Alcohol and or drugs are known to substantially decrease people's ability to think rationally and act in a cohesive manner. Therefore at places where alcohol or drug affected persons can be reasonably anticipated to attend the standard points score is doubled to reflect the serious effects of intoxicants.

Retrospective issues

The expanded meaning given to the definition of public building under the Health Act has raised concerns about its retrospective application. These concerns relate both to formerly approved *public buildings* and to those not previously identified as such.

There is a general legal presumption against the retrospective operation of a statutory or regulatory enactment (unless otherwise specifically provided). This means that an enactment is normally read and construed as not intended to affect the rights that were acquired, or liabilities that were incurred, before it came into operation.

A classic example of a provision that is explicitly *not* retrospective is regulation 4(1)(d) of the Local Government Act Building Regulations 1989, which expressly allows previously approved designs and constructions to remain, notwithstanding that they may not comply with current requirements.

From this we may distil the principle that where a construction method was previously approved under the appropriate legislation of the day, and there has been no change of use, then as long as the building remains unaltered, it should not be required to be changed to comply with current legislation. An exception would be if it has become unsafe or presents a clear public danger or hazard.

Buildings newly captured by the expanded interpretation of January 2000

In accordance with the above principle, it is recommended that for an existing building that is now recognised as a *public building* it should be able to continue to be used without any required changes in construction, subject to the following:

- it must remain compliant with the legislation in place when it was built or last underwent structural alteration
- it must not undergo any change of public building use involving a higher risk to the public
- it is safe and suitable for the use to which it is put.

Examples of such buildings are restaurants and public bars in hotels and taverns.

A certificate of approval will be required, and this should be issued by the relevant Local Government, based on the current floor ratio but constrained where necessary by the toilet and exit requirements applying at the time of construction. Of course, all operational requirements must be complied with.

Once the certificate of approval has been issued, any proposed extension or alteration to the building, or any change of use involving a higher risk to the public (whether or not this includes a change in risk category) would call up the normal public building requirements and procedures.

Previously approved public buildings

Public buildings approved prior to 1992 must continue to comply with the construction requirements in place when they were last approved, subject to there having been no change in use or unapproved structural building alterations. Copies of the regulations in place prior to 1992 are available from the Environmental Health Directorate.

As above, all current operational requirements must be complied with and the risk category of the building will determine the frequency of inspection.

Any proposed extension or alteration to the building, or any proposed change to another public building use involving a higher risk to the public, would call up the normal public building requirements and procedures.



DR Andrew Robertson
EXECUTIVE DIRECTOR
PUBLIC HEALTH

28 November 2006