



Light
Regional
Council

Access to Development Application Documents Policy

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Related Policy/Procedure:	Nil
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Previous Version:	<i>Interaction of the Development Act 1993, State Records Act 1997 and Freedom of Information Act 1991 with the Copyright Act 1968 Policy</i>
Applicable Legislation:	<i>Copyright Act 1968 (Cth) Development Act 1993 (SA) (repealed) Development Regulations 2008 (SA) (repealed) Freedom of Information Act 1991 (SA) Planning, Development and Infrastructure Act, 2016 (SA) Planning, Development and Infrastructure (General) Regulations 2017 (SA) Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017 (SA) State Records Act 1997 (SA)</i>
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1. Purpose

The purpose of this Policy is to outline Council's position with respect to providing development application information, including plans, held by Council in response to requests from property owners or third parties.

2. Background

The Copyright Act creates legally enforceable intellectual property rights by ensuring that works cannot be reproduced without the prior permission of the copyright owner.

This includes any plans, drawings, specifications and other documents relating to a development approval. Copyright applies automatically to works even if they are not marked with a copyright symbol "©".

Council will consider the provisions of the Copyright Act when providing access to documents relating to development applications, which as Commonwealth legislation has primacy over the state legislated PDI Act.

Under section 36(1) of the Copyright Act, the copyright owner maintains exclusive rights over development documentation provided to Council.

Generally, copyright is owned by the individual creator or author of the work or, where a work is created by a person during their employment, their employer will own copyright.

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Copyright ownership can be transferred ("assigned") by way of a written agreement.

Unless copyright has been assigned to the Council:

- copyright in building plans is owned by the architect or draftsman who drew them;
- copyright in a report is owned by the author of the report; and
- copyright in a table or graph or other technical information is owned by its creator.

A copyright infringement is an unauthorised reproduction of a work where it is (amongst other things):

- photocopied;
- scanned;
- published on a website;
- displayed on an overhead screen; and
- e-mailed.

Reproduction of a copyrighted work without permission may be an infringement enabling the copyright owner to take civil (and in some cases, criminal) action against the infringer. The Copyright Act has certain allowances, such as reproduction of documents for the commencement of judicial proceedings, which may be relevant to certain requests for information.

3. Definitions

- 'Building Rules' means:
 - The Building Code of Australia; and
 - Regulations under the PDI Act that regulate the performance, standard or form of building work; and
 - Any regulations that relate to designated safety features; and
 - Building standards published by the Minister under the PDI Act.
- 'Building Work' means work or activity in the nature of:
 - The construction, demolition or removal of a building (including any incidental excavation or filling of land); or
 - Any other prescribed work or activity,but does not include any work or activity excluded by the PDI General Regulations from the ambit of this definition.
- 'CAP' means Council's Assessment Panel.

- 'Copyright Act' means the *Copyright Act 1968 (Cth)*
- 'Development Act' means the *Development Act 1993 (SA)* (repealed).
- 'Development Regulations' means the *Development Regulations 2008 (SA)* (repealed).
- 'FOI Act' means the *Freedom of Information Act 1991 (SA)*.
- 'Official Record' is defined in section 3 of the *State Records Act 1997 (SA)* to mean a record made or received by Council in the conduct of its business. This includes records created, sent, received, forwarded or transmitted by Council employees and/or Elected Members in the performance and discharge of their functions and duties.
- 'PDI Act' means the *Planning, Development and Infrastructure Act 2016 (SA)*.
- 'PDI General Regulations' means the *Planning, Development and Infrastructure (General) Regulations 2017 (SA)*.
- 'Transitional Regulations' means the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017 (SA)*.

4. Policy

4.1 Inspection and copies of documents relating to development applications

For the purposes of this Policy, Council relies upon implied licences to allow it to reproduce works, where:

- reproduction is necessary by way of legal obligation; or
- reproduction is necessary out of practical necessity and in the circumstances, it is reasonable to expect that the owner of copyright would know that their work is required to be reproduced.

Council staff receive requests from the public to view or obtain copies of plans and documentation relating to development applications during the assessment process (including before, during and after a public notification period) or following a decision of Council with respect to an application.

4.2 Transition from the Development Act to the PDI Act

New development applications are required to be processed under the provisions of the PDI Act.

Development applications lodged prior to 19 March 2021 (and as yet not finally determined) continue to be processed under the Development Act pursuant to Regulation 11(2) of the Transitional Regulations.

Accordingly this Policy applies to two differing legislative processes until such time that there are no outstanding development applications awaiting final determination under the Development Act.

4.3 Development applications being assessed under the Development Act

4.3.1 Public notification of Category 2 and 3 development applications

Under the Development Act, development must be assigned to a category for the purposes of public notification.

The inspection provisions discussed within this section are only applicable during the period of public notification, being the period commencing on the day on which the notice of the development application is first given and ending on a day by which a written representation must be lodged under Regulation 35 of the Development Regulations.

The category of development determines the level of public notification required, as briefly described below:

Category 1

- a. No public notification required.

Category 2

- a. Owners/occupiers of adjacent land are notified of the development to the distance required in the Development Regulations.

Category 3

Public notification is required to the following:

- a. Owners/occupiers of adjacent land to the distance required in the Development Regulations; and
- b. Any other owners/occupiers of land who, in the opinion of Council, will be directly affected to a significant degree by the development; and
- c. The public generally (the legislative requirement is through advertisement in the local paper).

4.3.2 Statutory requirements for public notification

Regulation 34(1) of the Development Regulations provides that the Council must ensure that the following documents, lodged with category 2 and 3 development applications, are made available for inspection by the public:

- the application
- any supporting plans, drawings, specifications or other documents or information provided to the Council
- any statement of effect (where applicable).

Regulation 34(2) and Regulation 34(3) state that the Council must provide to a member of the public, a copy of any information available for inspection where:

- a request is made within the inspection period (i.e. for 10 business days after notice is given by the Council per Regulation 35 of the Development Regulations); and
- a fee fixed by the Council is paid (refer to Council's *Schedule of Fees and Charges*); and
- the person who requests the copy provides their name, address and contact details to the Council; and
- verification of identification is provided (e.g. driver's licence or similar).

Regulation 34(4) provides that Council is not required to make available for public inspection or for copy any plans, drawings, specifications or other documents or information where:

- This information relates to the assessment of the proposed development against the Building Rules and which are not reasonably necessary for determining whether Development Plan consent should be granted; or
- Council is of the opinion that to do so would unreasonably jeopardise the present or future security of a building.

For Category 2 and Category 3 development applications

- Council makes Regulation 34(1) documents available for public viewing during the notification period at its offices and on its website.
- The documents on Council's website are locked for inspection only and printing, copying and downloading functions will be disabled to avoid infringing copyright in those documents.
- If a member of the public wishes to obtain a copy of a development application document during its public notification period, that person may attend the Council's offices in person.

4.4 Development applications being assessed under the PDI Act

4.4.1 Public Notification

Under the PDI Act, development is assigned a category of either:

- 'Accepted development',
- 'Code assessed development' (being either 'Deemed-to-satisfy' or 'Performance assessed'); or
- 'Impact assessed development'.

'Performance assessed' development is required to be publicly notified unless it comprises a class of development excluded from public notification in the Planning and Design Code.

The Assessment Manager is the relevant authority for 'Performance assessed' development that does not require public notification, whereas the Council Assessment Panel is the relevant authority for 'Performance assessed' development that requires public notification.

The State Planning Commission or the Minister for Planning are the relevant authorities for 'Impact assessed development'.

4.4.2 Statutory requirements for public notification

Regulation 49(1) of the *Planning, Development and Infrastructure (General) Regulations* provides that the relevant authority must ensure that the following documents, are uploaded to the SA Planning Portal and are made reasonably available for inspection by the public:

- the application; and
- any supporting plans, drawings, specifications or other documents or information provided to the relevant authority under section 119 of the PDI Act.

Documents are to be made available for inspection, without charge, at the principal office of the relevant authority for the inspection period, being 15 business days after notice is given by the relevant authority (per Regulation 50) for a 'performance assessed' publicly notifiable development.

Regulation 49(2) and Regulation 49(3) state that the relevant authority must provide to a member of the public, a copy of any information available for inspection where:

- a request is made within the inspection period; and
- a fee fixed by the relevant authority is paid (refer to Council's *Schedule of Fees and Charges*); and
- the person who requests the copy provides their name, address and contact details to the relevant authority; and
- Verification of identification is provided (e.g. driver's licence or similar).

Regulation 49(5) of the PDI General Regulations provides that the relevant authority is not required to make available for public inspection, or for copy, any of the abovementioned plans, drawings, specification or other documents where:

- the information relates to the assessment of the proposed development against the Building Rules and which are not reasonably required for determining whether planning consent should be granted; or

- the relevant authority is of the opinion that to do so would unreasonably jeopardise the present or future security of a building.

Development application documents related to Regulation 49(1) are also made available to access (subject to terms and conditions) during the notification period on the SA Planning Portal.

Otherwise, if a member of the public wishes to obtain a copy of a development application document during its public notification period, that person must attend the Council's offices (as principal office of the relevant authority).

4.5 Inspections and copies of documents outside of public notification requirements

While Council or the relevant authority have a legal obligation under the Development Act or PDI Act respectively to provide public access to development application information as listed in the statutory requirements referred to in this Policy, they have no such legal obligation in respect of the following instances:

- a. Development Act:
 - i. For Category 1 development applications
 - ii. For Category 2 and 3 development applications, before and after the relevant public notification period
- b. PDI Act:
 - i. For any development application other than a 'Performance assessed' development; and
 - ii. For 'Performance assessed' development, the relevant authority is not required to make copies of plans or documents available outside of the public notification period.

From time to time, Council receives requests from property owners or third parties to provide access to documents relating to development applications for the purpose of inspecting or making copies of such documents.

Sometimes, access may be requested to investigate if the development application has been processed correctly.

Regulation 101(1) of the Development Regulations (now repealed) required that certain documents be provided for inspection and for the purchase of copies of such documents. However, this is no longer a legislative requirement as this has not been replicated in the PDI Act.

The SA Planning Portal contains certain development application details which are publicly accessible in accordance with Regulation 120(1) of the PDI General Regulations. However, this does not enable members of the public to access or obtain copies of application plans and documents from the SA Planning Portal, notwithstanding that such documents were originally accessible to members of the public under Regulation 101 of the Development Regulations (now repealed).

Council has determined to now provide limited access to development application documents it holds from the previous Development Act regime, because the alternative would require members of the public seeking such information (outside of the public notification processes) to apply for access under the FOI Act.

Outside of the public notification processes under the Development Act, Council will provide access to members of the public to development application documents held by Council on the following basis:

- a. The person seeking access must demonstrate to Council's satisfaction that he or she has a sufficient interest in the development, by virtue of being the owner or occupier of the land the subject of the development or of adjoining land (or by being the legal or professional representative of such a person).

Access will not be given to documents that, in the opinion of Council, would unreasonably jeopardise the present or future security of a building.

- b. Any sensitive personal information (of owners, applicants, representors etc.) should be redacted by Council prior to provision of access as if the FOI Act applied to this personal information in this Policy.
- c. In the absence of permission from the copyright owner of the documents, access should be limited to inspection only, with no ability to obtain copies (including to take photographs of the documents).
- d. If the permission of the copyright owner of the documents is provided and copies are sought, the person must pay to Council any fee determined by Council under section 188 of the *Local Government Act 1999* to apply to the provision of copies of such documents.

4.6 Development Information requests made under the FOI Act

Requests for development application documents may be subject to Section 55 of the PDI Act, which provides that the FOI Act does not apply to or in relation to a document that is received, created or held under Part 4, Division 2 of the PDI Act (namely the SA Planning Portal).

The Chief Executive of the department responsible for assisting the Minister to administer the PDI Act ("Department") is responsible for establishing and maintaining the SA Planning Portal (not Council) and any queries related to such documents should be directed to that Department.

Council will consider purported or proposed applications under the FOI Act that seek access to documents received, created or held outside of the SA Planning Portal, that is, those received by Council under the previous Development Act regime.

4.7 Copies of application documents for CAP Agendas and Minutes

Regulation 14(3) of the PDI General Regulations provides that members of the public are entitled to reasonable access to:

- a) the agendas for meetings of an assessment panel; and
- b) the minutes of meetings of an assessment panel.

The agenda is the list of items to be considered by the CAP at its meeting, and the minutes are the record of decisions made by the CAP.

Development applications to be considered by the CAP include supporting plans, drawings, specifications or other documents or information provided to the relevant authority (relevant attachments). These relevant attachments are subject to copyright.

The relevant authority enjoys an implied license of necessity to provide copies of the CAP agenda, officer reports and relevant attachments to CAP members and to staff attending a CAP meeting. This implied license of necessity does not extend beyond this.

Council publishes the CAP Agendas, officer reports and relevant attachments and minutes on its website. These documents are locked for **inspection only** and printing, copying and downloading functions are disabled to avoid infringing copyright in those documents.

A hard copy of the agenda and Council Officer reports (excluding attachments) is made available for viewing prior to the CAP meeting at the Kapunda Principal Office, Freeling Branch Office and Greenock and Kapunda Libraries.

A copy of a Council Officer report (excluding attachments) will be made available to any person prior to the meeting on request.

4.8 Duplication of Documents and the *State Records Act 1997*

The State Records Act 1997 (SA) requires Council to maintain Official Records in good order and condition. This obligation extends to the capture, storage, maintenance and disposal of both physical and electronic records.

To ensure Official Records are kept in good order and condition, Council may create duplicates of documents, including electronic copies to be saved in its internal records management systems, and additional hard copies of documents where appropriate.

The reproduction of works for records management purposes will not be made available to the public. Where possible, original works transferred to electronic formats will be destroyed.

4.9 Fees

Fees relating to accessing documents under this Policy will be reviewed annually as part of Council's annual review of fees and charges.

4.0 Availability of Policy

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.light.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

History

Policy adopted at Ordinary Council meeting held 26 April 2022, Resolution Number OCM-2022/060.