

Council Policy

Access to Development Application Documents



COUNCIL POLICY

	<p>ACCESS TO DEVELOPMENT APPLICATION DOCUMENTS (previously known as DEVELOPMENT APPLICATION DOCUMENT REPRODUCTION)</p>
---	---

Policy Number:	DEV-03
Responsible Department(s):	Development Services supported by Information Management
Relevant Delegations:	As per the Delegations Register and as detailed in this Policy
Other Relevant Policies:	Fees and Charges Policy
Relevant Procedure(s):	None
Relevant Legislation:	<i>Planning Development & Infrastructure Act 2016</i> <i>Planning Development & Infrastructure (General) Regulations 2017</i> <i>Freedom of Information Act 1991 & Regulations</i> <i>State Records Act 1997</i> <i>Copyright Act 1968 (Cth)</i>
Policies and Procedures Superseded by this policy on its Adoption:	Development Application Document Reproduction Policy, SPDPC Item 12.1, Res 47/16
Adoption Authority:	Council
Date of Adoption:	22 February 2022
Effective From:	08 March 2022
Minute Reference for Adoption:	Item 35/22
Next Review:	No later than 22 February 2025 or as required by legislation or changed circumstances

Version Control

Version No.	Date of Effect	Description of Change(s)	Approval
1.0.	11/10/2016	<i>Policy Adoption</i>	<i>SPDPC - Res 47/16</i>
2.0	22/2/2022	<i>Policy name change and review</i>	<i>Council - Res 35/22</i>

ACCESS TO DEVELOPMENT APPLICATION DOCUMENTS POLICY

1. INTRODUCTION

Under the *Planning Development and Infrastructure Act 2016* (the PDI Act) and *Planning Development and Infrastructure (General) Regulations 2017* (the PDI Regulations) members of the public have various entitlements to information held by the Adelaide Hills Council or the Attorney General's Department (State Planning) that are relevant to development applications and approved building work.

Providing information to members of the public may require the reproduction of documents. Council is obligated to reproduce documents in accordance with records management obligations under the *State Records Act 1997 (SA)*.

The *Freedom of Information Act 1991 (SA)* provides a legally enforceable right for members of the public to access Council information which is not required to be made publicly available.

As well as being bound by the requirements of the above Acts, Council is subject to the Copyright Act 1968 (Cth), which restricts the reproduction of written material, artistic works and other creative works, without permission of the copyright owner.

2. OBJECTIVES

This Policy provides Council and its administration and members of the public with guidelines on the process for managing requests for access to, and/or copies of, development application information. It also provides information on copyright.

3. DEFINITIONS

- 3.1 "CAP" means Council Assessment Panel
- 3.2 "Copyright Act" means the Commonwealth *Copyright Act 1968*;
- 3.3 "Council" means Adelaide Hills Council;
- 3.4 "Document" means a paper or record of any kind, including a disk, tape or other article from which information is capable of being reproduced (with or without the aid of another article or device);
- 3.5 "Freedom of Information Act" means the South Australian *Freedom of Information Act 1991*;
- 3.6 "Official Record" has the same meaning as the *State Records Act*, being a record made or received by the Council in the conduct of its business, but does not include:
 - a record made by an agency as a draft only and not for further use or reference; or
 - a record received into or made for the collection of a library, museum or art gallery and not otherwise associated with the business of the agency; or
 - a Commonwealth record as defined by the *Archives Act 1983* of the Commonwealth or an Act of the Commonwealth enacted in substitution for that

- Act; or
 - a record that has been transferred to the Commonwealth.
- 3.7 **"PDI Act"** means the *Planning Development and Infrastructure Act 2016*;
- 3.8 **"PDI Regulations"** means the **Planning Development and Infrastructure (General) Regulations 2017**;
- 3.9 **"Public notification period"** means the time when representations may be made to the Council as prescribed by the PDI Regulations on a development application where *public notice* was prescribed
- 3.10 **"Record"** has the same meaning as the *State Records Act*, being:
- written, graphic or pictorial matter; or
 - a disk, tape, film, social media, webpage or other object that contains information or from which information may be reproduced;
- 3.11 **"State Records Act"** means the *State Records Act 1997*;
- 3.12 **"Work"** has the same meaning as this term in the *Copyright Act*, i.e. a literary, dramatic, musical or artistic work;

4. SCOPE

- 4.1 This Policy applies to requests for access to, and/or copies of, development application plans and information to both members of the public and, property owners.
- 4.2 It covers circumstances where requests for information are made during the assessment of an application and after a decision. For requests during the public notification period of a development application information is available for viewing on the Plan SA Portal and legislation requires that copies must be made available to members of the public if requested.
- 4.3 The Policy also applies to requests for copies of development application documentation where the request for a copy of the information is made after the close of the public notification period.

5. POLICY STATEMENT

- 5.1 This Policy affirms Council's commitment to openness and transparency in the provision of information to the public in accordance with its legislative obligations and its commitment to high standards of records management whilst avoiding infringing copyright of that information.

6. COPYRIGHT

6.1 What is Copyright?

Copyright is a form of property which exists in written, artistic and other "works". Copyright only exists through the operation of the *Copyright Act*. As with other forms of property, copyright may be sold or transferred, and allows persons who create works to derive an income from them.

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

Where a work is reproduced without permission, a copyright infringement occurs which, in turn, gives rise to a right for the copyright owner to take civil (and in some cases, criminal) action against the infringer.

Copyright does not protect mere ideas, rather, it protects the way that ideas and information are described, illustrated or documented.

6.2 What is "work"?

Most of the works which the Council deals with include:

- written reports produced by engineers, accountants, planners and other professionals
- building plans and specifications
- infrastructure plans
- tender documents
- letters and emails
- photographs
- diagrams; graphs/charts.

The term "literary works" in the Copyright Act is not exhaustively defined and, according to case law authorities, can in some circumstances, include documents such as letters where they contain original creative written "works".

6.3 When does copyright protection arise?

Copyright protection automatically arises as soon as a work is recorded or fixed onto a medium which can be reproduced.

Copyright exists in works regardless of whether or not a work is endorsed with a "©" symbol and whether or not it contains a copyright warning.

6.4 Who owns copyright?

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

For example, where a Council employee creates a "work" during the course of their employment and in accordance with their job description – in such cases, copyright automatically vests in the employer.

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.

6.5 What is a copyright infringement?

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.

6.6 When can works lawfully be reproduced?

Works can be reproduced without committing a copyright infringement where the Council is the owner of the copyright, or where the Council has permission, called a "licence", which allows it to lawfully reproduce a document.

In this Policy, the 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.

6.7 Specific legislative exemptions to copyright infringements

In addition to licences, there are a number of legislative exemptions which allow the Council to reproduce documents for certain purposes, including:

- where reproduction of a work is required for the purpose of giving professional advice by a legal practitioner or for the purposes of litigation;
- where reproduction of a work constitutes a "fair dealing" for the purpose of research or study; or
- During the assessment of development applications, the Internal reproduction of documents for assessment purposes, including for public notification purposes and for Council Assessment Panel Agendas.

7. MANAGING REQUESTS FOR COPIES OF DEVELOPMENT APPLICATION INFORMATION

The Plan SA website contains a register of Development Applications for the entire state that is searchable by street and suburb, street address, application number, applicant name and Council area. This provides a good basic level of general information for the public.

7.1 General Requests for Access to and/or Copies of Development Application Information

Except in limited circumstances outlined in this Policy, general requests for copies of development application information will require a Freedom of Information Application to be completed, verification of identity and the relevant fee paid. A link to the application form is available on the Council website www.ahc.sa.gov.au/Access to Council Information

Council's administration will process the Freedom of Information Application and liaise with development staff to locate the documentation sought before seeking the permission of the applicant and the copyright owner to copy the information. If permission cannot be obtained, the information management team will discuss alternate options, such as viewing the documentation.

7.2 Viewing Development Application Information on Public Notification and Obtaining Copies

Public inspection of development applications is permitted by members of the public where public notification is required for the purposes of sections 107(3) and 110(2) of the PDI Act but only during the public notification period. Requests from a member of the public for copies of the application information on display made between the commencement date and the close date of the public notification period must be provided on payment of a fee fixed by the Fees and Charges Register. Regulation 49 (3) of the PDI Regulations permits Council to require the person making the request to provide their name, address and contact details and verify this information in an appropriate manner.

For information requests outside of the public notification period or, where there is no public notification applicable to the application, the request is treated as a General Request as outlined in 7.1 of the Policy. The exception is where the request is by a person who submitted a representation in the prescribed manner for the relevant development and the request is for access to the response to representations by the applicant (refer 7.3).

7.3 Requests by a Person who submitted a Representation for access to plans and information provided by the applicant in response to representations

7.2.1 In the case of a development with public notification where the CAP is the relevant authority and staff do not have delegation to determine a decision for planning consent, access to copies of agenda reports and attachments will be available to view via the Council website and at the CAP meeting in the form of a hardcopy agenda. This includes plans and information provided by the applicant in response to public notification representations.

Copies of plans and reports will only be supplied to a person who submitted a representation where a request is made by that person and where the permission of the author of the plans and/or reports can be obtained to provide copies, prior to the CAP meeting.

7.2.2 In the case of development with public notification where staff have delegation to determine a decision for planning consent, access to view plans and information provided by the applicant in response to representations may be provided where the request is by a person who submitted a representation in the prescribed manner and, the request is made prior to a decision being issued. Viewing will be in person at the Council office.

Copies of plans and reports will only be supplied to a person who submitted a representation where a request is made by that person and where the permission of the author of the plans and/or reports can be obtained to provide copies, prior to the decision being issued.

- 7.4 Access for Applicants to Development Application Information held in the Plan SA Portal
The PDI Act intended persons who interact with the development system to do so by digital means. This means applicants have access to their approved plans and decision notices on the Plan SA portal where the decision relates to an application submitted for planning or building consent in the Plan SA Portal.

Should a request for copies of development application information received by Council relate to a development application lodged in the Plan SA Portal and be from a person other than the applicant for the development application, then a Freedom of Information Application will be requested as outlined in 7.1 of the Policy. This will be forwarded by Council to State Planning at the Attorney General's Department for action. The exception to this is where the request is made between the commencement date and the close date of the public notification period of a development (refer section 7.2) .

8. DELEGATION

- 8.1 The Chief Executive Officer has the delegation to:
- Approve, amend and review any procedures that shall be consistent with this Policy; and
 - Make any legislative, formatting, nomenclature or other minor changes to the Policy during the period of its currency.

9. AVAILABILITY OF THE POLICY

- 9.1 This Policy will be available via the Council's website www.ahc.sa.gov.au.