

Access to Development Documentation

Classification:	Council Policy
Policy Name	Access to Development Documentation
First Issued / Approved:	May 2003
Last Reviewed:	25 September 2012, C8873 22 October 2013, C9447 27 January 2015, C10006 12 December 2017, C11537 29 April 2021, C290421/12811
Next Review:	April 2025
ECM tracking number:	985577
Responsible Officer:	Director Corporate and Development
Relevant Legislation:	Copyright Act 1965 (Cth) Development Act 1993 Development Regulations 2008 Freedom of Information Act 1991 Planning, Development and Infrastructure Act 2016 State Records Act 1997
Related Policies:	n/a

1. Introduction

- 1.1 The purpose of this policy is to establish a framework for the access by the public to development documentation.

2. Strategic Plan Desired outcomes

- Principles:* 4. Governing with Integrity
- Themes:* Spans across all Strategic Plan Themes
- Goals:* Spans across all Strategic Plan Goals
- Priorities:* Spans across all Strategic Plan Priorities

3. Our Approach

Council will seek to:

- 3.1 Provide appropriate customer service while complying with relevant legislation.

4. Legislative Requirements and Corporate Policy Context

- 4.1 Under the former *Development Act 1993 (SA)* and *Development Regulations 2008 (SA)* members of the public had various entitlements to information held by the Council that are relevant to development applications and approved building work.
- 4.2 In the absence of any mechanism for members of the public to access information under the *Planning, Development and Infrastructure Act 2016*, access to plans is available through the Freedom of Information Act process, subject to any limitations under the *Planning, Development and Infrastructure Act 2016*.

The Plan Search process will be maintained for inspection access to plans for any development application which predates the commencement of the *Planning, Development and Infrastructure Act 2016*

Pursuant to Regulation 49 of the *Planning, Development and Infrastructure (General) Regulations 2017*, members of the public are entitled to inspect hard copies of applications for performance assessed development during any period of notification. Copies are to be made available to public in accordance with Regulation 49(2), during the period of notification.

- 4.3 The *Freedom of Information Act 1991 (SA)* provides a legally enforceable right for members of the public to access other Council information which is not required to be made publicly available. Pursuant to the *Planning, Development and Infrastructure Act*, the *Freedom of Information Act* does not apply in circumstances where plans are publicly available using the Planning Portal.
- 4.4 Providing information to members of the public may require the reproduction of documents. The Council is also obligated to reproduce documents while adhering to records management obligations under the *State Records Act 1997 (SA)*.
- 4.5 As well as being bound by the requirements of the above Acts, the 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.
- 4.6 This Policy affirms the 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 in that information.

5. Interpretation

Council adopts the following definitions for this policy:

- 5.1 “**work**” means a literary, dramatic, musical or artistic work;
- 5.2 “**record**” means written, graphic or pictorial matter; a disk, tape, film or other object that contains information or from which information may be reproduced (with or without the aid of another object or device);
- 5.3 “**official record**” means a record made or received by the Council in the conduct of its business, but does not include:

- 5.3.1 a record made or received by an agency for delivery or transmission to another person or body (other than an agency) and so delivered or transmitted; or
- 5.3.2 a record made by an agency as a draft only and not for further use or reference; or
- 5.3.3 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
- 5.3.4 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
- 5.3.5 a record that has been transferred to the Commonwealth.

6. Policy Objectives/Scope/Actions

- 6.1 The purpose of this policy is to establish a framework for the access by the public to development documentation.

Copyright

- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 Copyright does not protect mere ideas, rather, it protects the way that ideas and information are described, illustrated or documented.

Copyright Protection

- 6.6 Copyright protection automatically arises as soon as a work is recorded or fixed onto a medium which can be reproduced.
- 6.7 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.

Copyright Ownership

- 6.8 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.
- 6.9 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.
- 6.10 Copyright ownership can be transferred ("assigned") by way of a written agreement. Unless copyright has been assigned to the Council:

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

Copyright Infringement

- 6.11 A copyright infringement is an unauthorised reproduction of a work where it is (amongst other things):
 - 6.11.1 photocopied;
 - 6.11.2 scanned;
 - 6.11.3 published on a website;
 - 6.11.4 displayed on an overhead screen; and
 - 6.11.5 e-mailed.

Reproduction

- 6.12 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.
 - 6.12.1 In this Policy, the Council relies upon implied licences to allow it to reproduce works, where:
 - 6.12.1.1 reproduction is necessary by way of legal obligation; or
 - 6.12.1.2 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.

Planning, Development and Infrastructure Act

Internal reproduction of documents for assessment purposes.

- 6.13 During the assessment of a development application, Council staff may need to make reproductions of plans and other works so that they may be marked, or drawn upon.
- 6.14 The reproduction of works is necessary for development assessment purposes, such works can lawfully be reproduced by the Council for internal purposes, including for inclusion in Council Assessment Panel agendas.
 - 6.14.1 Reproduction may be required in relation to applications requiring public notification:

Copies of application documents for the Council Assessment Panel (CAP) agendas.

- 6.15 CAP agendas necessarily contain officer reports and all documents relevant to development applications to be determined by the CAP, including copyright-protected works.
- 6.16 Regulation 14(3)(a) of the *Planning, Development and Infrastructure (General) Regulations 2017* provides that members of the public are entitled to reasonable access to the agendas for meetings of an assessment panel. An agenda is the list of items to be deliberated upon by the CAP at its meeting and does not on its own include reports and other attachments to the agenda. However, for the purposes of public access, a copy of the agenda with plans will be available at the customer service desk and on the website five business days prior to the relevant meeting of the CAP. The documents published on the website will include instructions and mechanisms to prevent the reproduction of any materials subject to copyright.
- 6.17 Due to this legal obligation, the Council enjoys an implied licence of necessity for providing copies of such documents to its CAP members, and to staff attending a CAP meeting.
- 6.18 However, this requirement does not extend to a right to members of the public to access officer reports and other attachments to that agenda that are to be considered in confidence.
- 6.19 Accordingly, the Council cannot provide physical copies of copyright-protected works such as plans and other supporting documents for a development application attached to the CAP agenda to members of the public as this would constitute a copyright infringement. However, as discussed under 6.25, physical inspection will be facilitated in hard copy and electronically.

Inspection and copies of the register of applications:

- 6.20 The Council was required to keep a register of development applications, pursuant to regulation 98(1) of the (former) *Development Regulations 2008*. This requirement extends to the transition period from the *Development Act* to the *Planning, Infrastructure and Development Act*. The register is to be kept up to date for as long as there are still applications being processed under the *Development Act*.
- 6.21 The register is required to contain information about development applications, not the application documents themselves. The register should contain:
- 6.21.1 the name and address of the applicant (or of each applicant);
 - 6.21.2 the date of the application;
 - 6.21.3 the date on which the application was received by the Council or other relevant authority;
 - 6.21.4 a description of the land which is the subject of the application;
 - 6.21.5 a brief summary of the matters, acts or things in respect of which any consent or approval is sought;
 - 6.21.6 details of any referral or concurrence on the application;
 - 6.21.7 whether any decision is made on the application by the Council, a joint assessment panel, the State Planning Commission or the Governor (where appropriate);
 - 6.21.8 any decision on the application;
 - 6.21.9 In the case of an application for building rules consent – the fee or fees payable:

- 6.21.9.1 the date of the commencement of any building work and the date of the completion of any building work; and
 - 6.21.9.2 if any decision on the application is the subject of an appeal, the result of the appeal.
- 6.22 The Council historically made the register available for inspection by the general public (no fee).
- 6.23 The Council will provide copies of documents kept for the purposes of its register where to do so would not constitute a copyright infringement.
- 6.24 Where a copyright infringement could arise, the Council will not provide copies of these documents, unless the person requesting such has obtained permission from the copyright owner, or otherwise has signed a statutory declaration to the effect that the owner of copyright cannot be located after reasonable enquiries have been made.

Inspection and copies of documents relating to approved developments:

- 6.25 There is no provision under the Planning, Development and Infrastructure Act to provide public access to development applications. However, the Council will, in relation to Development Applications made under the Development Act and Planning Infrastructure and Development Act, subject to FOI procedures in the case of applications made under the PDI Act, provide access for inspection of approved Development Applications. Pursuant to Regulation 49 of the *Planning, Development and Infrastructure (General) Regulations 2017*, members of the public are entitled to inspect hard copies of applications for performance assessed development during any period of notification. Copies are to be made available to public in accordance with Regulation 49(2), during the period of notification.
- 6.26 Other than in relation to the exceptions in this subclause, any requests for copies (part or whole) of Development Application details will be considered upon application by the person requesting details under the Freedom of Information Act. Exceptions exist where the person requesting the plans and details
 - 6.26.1 is the owner of copyright in the documents;
 - 6.26.2 is the current owner of the building;
 - 6.26.3 is the applicant who obtained development authorisation of the building; or
 - 6.26.3 has obtained a written permission from the owner of copyright in the document for it to be reproduced.
 - 6.26.4 Is involved in formal litigation before a relevant Court.
 - 6.26.5 Has the written approval of the Group Manager City Development and Safety, his/her Director or the Chief Executive Officer.

7. Review and Authority

- 7.1 This Policy will be reviewed in accordance with Council's Policy and Procedure Framework.

8. Availability

- 8.1 The Policy is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au
- 8.2 The Policy will be available for inspection free of charge, at the Civic Centre during ordinary business hours and a copy may be purchased at a fee set annually by Council.
 - 8.2.1 City of Burnside Civic Centre; 401 Greenhill Road, Tasmore SA 5065
Telephone; 8366 4200; Email; burnside@burnside.sa.gov.au Office
hours: Monday to Friday, 8.30am to 5.00pm (except public holidays)

9. Further information

- 9.1 For further information about this Policy please contact:

City of Burnside Civic Centre; 401 Greenhill Road, Tasmore SA 5065
Telephone; 8366 4200; Email; burnside@burnside.sa.gov.au