	<b>Function:</b> TOWN PLANNING	<b>Adopted:</b> 6 <sup>th</sup> MAY 2015
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		<b>Next Review:</b> TBA
<b>MAKING AVAILABLE INFORMATION TO THE PUBLIC POLICY</b>		

## **Policy Statement**

The *Making Available Information to the Public Policy* is intended to establish Council procedure and guidelines for making information available at the request of the general public in accordance with various applicable legislation.

### **1. Introduction**

Under the *Development Act 1993 (SA)* and *Development Regulations 2008 (SA)* members of the public have various entitlements to information held by the Council that are relevant to development applications and approved building work.

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.

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

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.

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.

### **2. Applicable Legislation**

- a) Development Act 1993 (SA) and Development Regulations 2008 (SA)
- b) Freedom of Information Act 1991 (SA)
- c) Copyright Act 1968 (Cth)
- d) State Records Act 1997 (SA)

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### 3. Integration with Corporate Objectives

#### Governance Objective - Leadership

To adhere to the requirements of the Local Government Act 1999, regulations and other legislation that influences the operations of Council.

### 4. Definitions

In this Policy:

**"Copyright"** means a form of property which exists in written, artistic and other "works" and has the same meaning as defined in the *Copyright Act 1968* and it 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 Act"** means the Commonwealth *Copyright Act 1968*;

**"Copyright infringement"** means the reproduction of a work without permission of the copyright owner where it is among other things

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

**"Copyright license"** means permission from the copyright owner to reproduce a document.

**"Copyright owner"** means 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;

**"Council"** means the District Council of the Copper Coast;

**"Development Act"** means the South Australian *Development Act 1993*;

**"Development Regulations"** means the *South Australian Development Regulations 2008*;

**"Freedom of Information Act"** means the South Australian *Freedom of Information Act 1991*;

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**"Official record"** has the same meaning as in 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 or received by an agency for delivery or transmission to another person or body (other than an agency) and so delivered or transmitted; or
- 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.

**"record"** has the same meaning as in the *State Records Act*, being:

- written, graphic or pictorial matter; or
- 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);

**"State Records Act"** means the *State Records Act 1997*;

**"work"** has the same meaning as this term in the *Copyright Act*, i.e. a literary, dramatic, musical or artistic work and includes, but is not limited to:

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

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## 5. Application

Application of this Policy is dealt with under the following headings:

- 5.1 Copyright Act 1968
  - a) Copyright and copyright protection
  - b) Lawful reproduction of works
- 5.2 Development Act 1993
  - a) Exemptions to copyright infringements
  - b) Public Notification of category 2 and 3 development applications
  - c) Copies of applications for Council's Development Assessment Panel (CDAP) agendas
  - d) Inspection and copies of the register of applications
  - e) Inspection and copies of documents relating to approved developments
- 5.3 Freedom of Information Act 1992
- 5.4 State Records Act 1997

### 5.1 Copyright Act 1968

#### a) Copyright and copyright protection

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

Unless copyright has been assigned to the Council:

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

#### b) Lawful reproduction of works

Works can be reproduced without committing a copyright infringement where the Council is the owner of the copyright, or where Council has a copyright licence.

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

- i) reproduction is necessary by way of legal obligation; or

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- ii) 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.

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

- i) where reproduction of a work is required for the purpose of giving professional advice by a legal practitioner or for the purposes of litigation; and
- ii) where reproduction of a work constitutes a "fair dealing" for the purpose of research or study.

*[Note: According to section 40 of the Copyright Act, a "fair dealing" is a reasonable reproduction of a reasonable portion of a copyright work. This is prescribed in the Copyright Act to be 10% of the number of pages in a book; or if the book is divided into chapters – a single chapter. Where a text is published electronically, 10% of the number of words is prescribed to be a fair dealing, or if the text has chapters, a single chapter.*

*Where a Council officer is conducting research for the purposes of producing a report to the Council, they may reproduce copyright works to the extent that it is a "fair dealing" in that work.*

*Where research is required, the officer may photocopy or otherwise reproduce texts and other documents in accordance with this note without infringing copyright.*

*Where a work is not a text, but rather a plan or drawing, the "fair dealing" rule becomes less certain and depends on the facts and circumstances of the work, and the research of study for which it is required. In circumstances where such reproduction is required, it is recommended that the Council seek specific legal advice.]*

## **5.2 Development Act 1993**

The following Policy provisions apply to the reproduction of works under the *Development Act* by the Council.

### **a) Exemptions to copyright infringements**

Officers are entitled to reproduce copyright-protected application documents during the development assessment process to:

- i) display plans and other documents on an overhead screen and/or monitors during a CDAP meeting;
- ii) make copies of documents for internal discussions and other internal assessment processes;
- iii) scan and otherwise create electronic copies of documents for internal records management purposes; and

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iv) reproduce documents to attach to CDAP agenda reports for provision to CDAP members.

b) Public Notification of category 2 and 3 development applications

Regulation 34(1) 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:

- i) the application;
- ii) any supporting plans, drawings, specifications or other documents or information provided to the Council; and
- iii) 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 – see Regulation 35, Development Regulations); and
- a fee fixed by the Council is paid; and
- the person who requests the copy provides their name, address and contact details to the Council.

Accordingly, Council will reproduce works submitted as part of a development application for the purposes of regulation 34 as this is a necessary requirement of the Development Regulations.

As the persons who are entitled to make a representation in respect of Category 2 development application are limited, Council will require personal attendance at its offices to inspect development application documents during public notification periods. Council will also require persons attending the Council's offices to inspect Category 2 development applications to verify their identity through the provision of appropriate identification as to their name, address and contact details in accordance with Regulation 34(3) of the Development Regulations.

Category 3 application documents will be published on Council's website during public notification periods. However, these documents will be locked for inspection only and printing, copying and downloading functions will be disabled to avoid infringing copyright in those documents. Persons wishing to obtain copies of these documents must attend Council's offices in person.

c) Copies of applications for Council's Development Assessment Panel (CDAP) agendas

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CDAP agendas necessarily contain officer reports and all documents relevant to development applications to be determined by the CDAP, including copyright-protected works.

Section 56A(15) of the *Development Act* provides that members of the public are entitled to reasonable access to the CDAP agendas.

Due to this legal obligation, Council enjoys an implied licence of necessity for providing copies of such documents to its CDAP members, and to staff attending a CDAP meeting.

*However, this requirement does not extend to a right to members of the public to access officer reports and other attachments to that agenda.*

Accordingly, Council cannot provide physical copies of copyright-protected works such as plans and other supporting documents for a development application attached to the CDAP agenda to members of the public as this would constitute a copyright infringement.

CDAP agendas, reports and attachments are published on the Council's website. These documents may or may not include personal details of the applicant, authors of the documents or any submitters. **These documents are locked for inspection only and printing, copying and downloading functions will be disabled to avoid infringing copyright in those documents.** Where requested, personal details will be masked. Council's Development Application form contains a note referring applicants to this policy.

d) Inspection and copies of the register of applications

Council must make the register of development applications, that is required to be kept pursuant to regulation 98(1), available for inspection by the general public (no fee) during Council office hours.

Regulation 98(3) provides that the Council **may** provide to a member of the public a copy of any part of the register, or document kept for the purposes of regulation 98(1), on payment of a fee fixed by the Council.

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.

Only copies that can be produced in the Council offices at 51 Taylor Street, Kadina may be made available and shall be paid for by the applicant in accordance with Council's schedule of fees and charges. Where copies of the register are made it would not constitute a copyright infringement.

e) Inspection and copies of documents relating to approved developments

In terms of Regulation 101 of the Development Regulation 2008 Council is obliged to retain certain development application documents.

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Regulation 101(4)(a) provides that a person may inspect at the offices of Council during its normal office hours any document retained by Council under regulation 101(a1) or 101(1), without charge.

The Council may, without infringing copyright, provide copies of such documents to:

- i) the owner of the copyright of those plans (i.e. the architect/draftsperson); or
- ii) the person who commissioned those plans to be drawn up (i.e.: the person who applied for development authorisation); or
- iii) the current owner or occupier of the land; or
- iv) a person who has the written permission of the owner of copyright to obtain a copy of the plans; or
- v) if such permission cannot be obtained, then a copy of the document may be provided to the person provided that they sign a statutory declaration to the effect that they have made reasonable enquiries to locate the owner of copyright in the documents and has not been able to find them.

Only copies that can be produced in the Council offices at 51 Taylor Street, Kadina may be made available and shall be paid for by the applicant of the copies in accordance with Council's schedule of fees and charges.

### 5.3 Freedom of Information Act 1992

The following Policy provisions apply to the reproduction of works under the *Development Act* by the Council.

According to section 13(f) of the *Freedom of Information Act*, applicants may request that access to Council documents be given to them in a particular way.

Pursuant to section 20(1)(b) of the *Freedom of Information Act*, Council will refuse to grant access to documents the subject of an application under this Act if the documents are available for inspection by the Council or another agency – e.g. a State Government department – or if they are available for inspection through a separate process under another Act (e.g. documents relating to a development application that is available for inspection during the public notification period).

Section 22(1) of the *Freedom of Information Act* provides that access to Council documents may be given via various means, including by giving the applicant a copy of the document.

However, section 22(2)(c) of the *Freedom of Information Act* provides that where an applicant has requested that a copy of a document be provided to them, an alternative form of access may be given where providing a copy would involve an infringement of copyright in matter contained in the document.

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Therefore Council cannot lawfully reproduce works subject to copyright for the purpose of providing access under the *Freedom of Information Act* without the prior permission of the copyright owner.

In order to avoid infringing copyright, Council shall provide access to copyright-protected documents under the *Freedom of Information Act* by way of inspection only, unless:

- i) the applicant is the owner of copyright in those documents; or
- ii) the applicant has obtained the permission of the owner of copyright in those documents to have them copied; or
- iii) where the applicant has attempted to locate the owner of copyright, but has not been successful, the applicant signs a statutory declaration to this effect.

Where a document is over 20 years old (and therefore must be disclosed under 20(2)(c) of the *Freedom of Information Act*) Council must still adhere to section 22(2)(c) of the *Freedom of Information Act* and shall only allow inspection as the method of access if providing a copy would constitute a copyright infringement.

#### **5.4 State Records Act 1997**

In order to ensure that official records are kept in safe custody in accordance with the requirements of the *State Records Act*, Council will keep record of all official records by any one or combination of any of the following methods:

- i) reproductions of works to be made, including electronic copies ("scans") of documents to be saved in its internal records management systems
- ii) hard copies (which may include reproductions from electronic copies)

Where an official record is reproduced into an Electronic Document Records System, the original may be destroyed in accordance with General Disposal Schedule 21.

**[Note:** "General Disposal Schedule 21: For management and disposal of source documents and digitised versions after digitisation and the accompanying Digitisation of Official Records and Management of Source Documents Guideline" establish the criteria for enabling the destruction of source documents. Both GDS21 and the Guideline are available from [www.archives.sa.gov.au](http://www.archives.sa.gov.au).]

## **6. Delegation**

This policy will be enforced by Authorised Officers duly appointed by Council.

Information regarding this policy is to be directed, in the first instance, to the Director Development Services or the Director Corporate Services.

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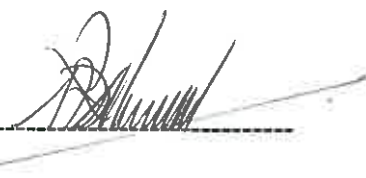
**7. Adoption and Review**

This Policy will be reviewed as required, with the review being undertaken by the Development Services and the Corporate Services Departments and a report provided to Council for consideration and adoption.

**8. Availability of Policy**

This Policy will be available for inspection without charge at the Council's Principal Office during normal business hours, and on Council's website.

A copy of this Policy may be obtained on payment of a nominated fee from Councils' principal office or may be down loaded from Councils' website.

Signed   
Mayor

Signed   
Chief Executive Officer

Date 14<sup>th</sup> May 2015

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