



Release of Documents Policy

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1. POLICY STATEMENTS

- 1.1 Under Tasmania's *Land Use Planning and Approvals Act 1993* and *Land Use Planning and Approvals Regulations 2014* members of the public have various entitlements to information held by the Council that are relevant to development applications and approved building work.
- 1.2 Under the *Building Act 2016*, Council's Permit Authority is required to retain records relating to building and plumbing work for a period of 10 years, which can be made available to the Director of Building Control, council employees, the building owner and licensed building practitioners.
- 1.3 The *Right to Information Act 2009 (TAS)* provides a legally enforceable right for members of the public to access other Council information which is not required to be made publicly available.
- 1.4 Providing information to members of the public may require the reproduction of documents for viewing. The Council is also obligated to reproduce documents in the course of adhering to records management obligations under the *Archives Act 1983 (TAS)*.
- 1.5 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.
- 1.6 Applications for information pertaining to statutory approvals can, as outlined in relevant legislation, be made outside the processes prescribed in the *Right to Information Act 2009*.
- 1.7 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. DEFINITIONS

In this Policy:

- 2.1 "**Archives Act**" means the *Archives Act 1983*.
- 2.2 "**Copyright Act**" means the *Commonwealth Copyright Act 1968*.
- 2.3 "**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.
- 2.4 "**Council**" means Kingborough Council.
- 2.5 "**LUPAA**" means Tasmania's *Land Use Planning and Approvals Act 1993*.
- 2.6 "**LUPA Regs**" means *Tasmania's Land Use Planning and Approvals Regulations 2014*;
- 2.7 "**Permit Authority**" has the same meaning as in the *Building Act 2016*.
- 2.8 "**Record**" has the same meaning as the *Archives Act 1983*, being a document or an object that is, or has been, made or kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance, or thing.
- 2.9 "**Right to Information Act**" means the *Tasmanian Right to Information Act 2009*.
- 2.10 "**Work**" has the same meaning as this term in the *Copyright Act*, i.e. a literary, dramatic, musical or artistic work. 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;
- photographs;
- diagrams;
- graphs; and
- charts.

2.11 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".

3. OBJECTIVE

3.1 This policy clarifies the circumstances under which Council will provide access to documents lodged in support of a Development Application or a decision or authorisation relating to a statutory building and plumbing application or approval.

4. SCOPE

4.1 This Policy applies to the reproduction of documents under the *Land Use Planning and Approvals Act 1993* and *Land Use Planning and Approvals Regulations 2014*; *Building Act 2016*; *Right to Information Act 2009*; *Archives Act 1983*; and the *Copyright Act 1968*.

5. PROCEDURE (POLICY DETAIL)

5.1 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.

5.2 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.

5.3 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; and
- where reproduction of a work constitutes a "fair dealing" for the purpose of research or study.

5.4 The following Policy provisions apply to the reproduction of works by Council, under the LUPAA and the LUPA Regulations and Schedule 1 of the *Building Act 2016*.

5.5 Internal reproduction of documents for assessment purposes

5.5.1 During the assessment of a statutory development, building or plumbing application, Council staff need to make reproductions of plans and other works so that they may be marked, or drawn upon, and so that original copies may be preserved. Further, such documents often need to be scanned so that they can be logged and viewed electronically and stored and saved into the Council's records management system.

5.5.2 As the reproduction of works is necessary for statutory approval purposes, such works can lawfully be reproduced by the Council for internal purposes.

5.6 Access to documents during the Public Notification Period for a Development Application

5.6.1 Discretionary planning permit applications are made under section 57 of the *Land Use Planning and Approvals Act 1993*. These are applications which Council has the discretion to either approve or refuse based upon compliance with the requirements of the planning scheme.

- 5.6.2 Discretionary planning permit applications are subject to a mandatory public notification process which includes a 14-day public exhibition period where any person may inspect the application. Details for an application are available for viewing at:
- At the Civic Centre, 15 Channel Highway, Kingston
 - Online via Council's website (through the list of advertised planning applications).
- 5.7 Outside of the Public Notification Period for a Development Application
- 5.7.1 If a member of the public requests to view or obtain a copy of development information outside of the notification period, but before a development is approved, the Council will generally not provide access of these documents to them with the exception of the circumstances below.
- 5.7.2 For discretionary applications to be determined by Planning Authority, viewing of amended plans and reports by a person who has made a valid representation will be permitted upon the release of the Council agenda.
- 5.7.3 For discretionary applications to be determined by Council staff under delegation, viewing of amended plans and reports by a person who has made a valid representation will be permitted by pre-arranged appointment upon application to the assessing officer.
- 5.7.4 In the above circumstances, where the person requests a copy of the information, this will be provided only where the permission of the applicant or, the copyright owner or applicant, has been given to make a copy, subject to:
- paying any applicable fee set by the Council; and
 - providing their name, address and contact details to the Council; and
 - verifying their identity through the provision of appropriate identification.
- 5.7.5 In all other circumstances, persons making such a request should apply for disclosure of the document under the Right to Information Act. However, it should be noted that access to a document must not be given by providing a copy of that document if to do so would constitute a copyright infringement (see section 8).
- 5.7.6 LUPPA only requires information to be accessible during the representation phase and is intended to limit third party "interference" in the permitting process.
- 5.8 Viewing and obtaining copies of application documents for Council Planning Authority Meetings
- 5.8.1 Planning Authority agenda items necessarily contain officer reports and all documents relevant to development applications to be determined by the Planning Authority including copyright-protected works. Due to this legal obligation, the Council enjoys an implied licence of necessity for providing copies of such documents to Councillors and staff when Council is acting as a Planning Authority.
- 5.8.2 Councils are entitled to reproduce copyright-protected application documents during the development assessment process to:
- display plans and other documents during a Planning Authority meeting; and
 - reproduce documents to attach to the Council agenda.
- 5.8.3 Council provides reasonable access to agendas, the officer reports and minutes by publishing these documents on the Council's website.
- 5.9 Inspection and copies of documents relating to statutory planning, building and plumbing application approvals, authorisations, consents and decisions.
- 5.9.1 In the case of applications that have been assessed and a decision made, regulation Council is obliged to retain certain development application documents relating to building work only (i.e. not regulated/significant trees, land divisions or land uses). These documents include

“all technical details, particulars, plans, drawings, specifications and other documents or information relating to building work”.

- 5.9.2 A person may inspect at the offices of the Council during its normal office hours any document retained by the Council under regulation, with the consent of the Council or the owner of the building to which the document relates, and on payment of a fee fixed by the Council (refer Fees and Charges Policy).
- 5.9.3 A person may, on payment of a reasonable fee fixed by the Council, obtain a copy of any document retained by the Council related to statutory processes and decision making.
- 5.9.4 The provision of Council Permit Authority Records relating to statutory building and plumbing application approvals, authorisations, consents and decisions will be in accordance with Section 27 of the Building Act 2016. Records of these approvals can only be provided to the following persons:
- the Director of Building Control or other authorised person;
 - an employee of the council that appointed the permit authority, if access to the information is necessary as part of his or her employment;
 - the owner of premises referred to in the information;
 - a building surveyor, building services provider, or other licensed practitioner, that has been engaged by an owner of the premises referred to in the information;
 - any other person prescribed in the Building Act 2016 or the Director of Building Control
- 5.9.5 In general, recognition of the practical need for copies of such documents to be provided in certain situations, and taking into account copyright considerations, the Council will provide copies where the person requesting the copies:
- is the current owner of the building; or
 - is the applicant who obtained development authorisation of the building; or
 - requires the documents for the purposes of litigation, or to seek legal advice; or
 - has signed 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.
- 5.9.6 Exceptions to this include when copying the document:
- in the opinion of the Council, unreasonably jeopardises the present or future security of a building; or
 - involves an infringement of copyright in matter contained in a document; or
 - constitutes a breach of any other law.
- 5.9.7 Accordingly, where a person does not have permission from the copyright owner of plans and other documents held by the Council under regulation the Council is not obliged to provide a copy of that document to that person.
- 5.10 Requests under Right to Information Act
- 5.10.1 Kingborough Council is committed to providing information in order to provide a clear and transparent government and comply with appropriate legislation.
- 5.10.2 The *Right to Information Act 2009* provides a legally enforceable right to members of the public in accordance with this Act and other relevant Acts, to obtain information contained in the records of the Government and public authorities.
- 5.10.3 The Right to Information Act does not allow the provision of information in some formats if that would result in a breach of copyright. Where that is the case, an applicant may be

permitted to view documents but not be given copies. It should also be noted that the exemption relating to the business affairs of a third party (s37) may also be relevant to such requests.

6. GUIDELINES

- 6.1 Some documents provided to Council as part of a Development Application, statutory building or plumbing application decision or authorisation, are protected by the Commonwealth's Copyright Act.
- 6.2 Council will not generally provide copies of information submitted for Development Applications (either hard copy or electronically) outside the statutory notice period unless the request is from the current building owner or applicant for development applications/approvals or unless in accordance with s27 of the Building Act 2016 for statutory building and plumbing approvals/decisions.
- 6.3 During the statutory notice period, for a development application, Council can provide access to documents related to a Development Application physically at the Civic Centre or electronically via our website.
- 6.4 Statutory building and plumbing approval documentation will only be provided via electronic means.

7. COMMUNICATION

- 7.1 This Policy will be published on Council's internet and intranet sites.

8. LEGISLATION

8.1 *The Copyright Act 1968*

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.

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.

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.

8.2 *Land Use Planning and Approvals Act 1993*

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(3) Unless the planning authority requires the applicant to give notice, the authority must give notice, as prescribed, of an application for a permit.

(4) A notice referred to in [subsection \(3\)](#) is, in addition to any other matters required to be contained in it, to name a place where a copy of the application, and of all plans and other documents submitted with the application, will be open to inspection by the public at all reasonable hours during the period for which representations may be made.

(4A) A person must not obscure or remove a notice of an application for a permit displayed on the land that is the subject of the application within the time period specified in [subsection \(5\)](#) .

Penalty: Fine not exceeding 10 penalty units.

(5) Any person may make representations relating to the application during the period of 14 days commencing on the date on which notice of the application is given under [subsection \(3\)](#) or such further period not exceeding 14 days as the planning authority may allow.

(5AA) If the time period specified in [subsection \(5\)](#) includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the land subject to the application for a permit is situated, that period is to be extended by the number of those days.

9. **RELATED DOCUMENTS**

9.1 *Right to Information Act 2009* Application for Assessed Disclosure.

9.2 Council Fees and Charges.

10. **AUDIENCE**

10.1 This Policy is intended for Council Employees, Councillors and external parties.

10.2 The policy is publicly accessible via Council's website.