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ACCESS TO DOCUMENTS and PROVISION OF INFORMATION RELATING TO DEVELOPMENT APPLICATIONS

Policy No: **DCSB-DC-03.05**	Approved on: **16 September 2024**	Administered by: **General Manager Prosperity**
Last Reviewed: **New Policy**	Review Date **16 September 2026**	Record No: **448944**
Classification: **Development Control**		

Strategic Plan link:
A Welcoming and Cohesive Community
A Robust and adaptive Economy that provides sustainable employment,
A healthy natural environment and an attractive built environment.

References and related Policies, Procedures and Forms:
Local Government Act 1999
Planning, Development and Infrastructure Act 2016

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1. Purpose

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

Any power or function of Council or a relevant authority described herein includes execution by an authorised delegate of such entity.

2. Policy

2.1 Inspection and copies of documents relating to development applications

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

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

Employees of Council regularly receive requests from members of the public to view or obtain copies of plans and documentation relating to development applications.

Such requests may be received during the assessment process (including before and after a public notification period) or following a decision of a Council to approve or refuse a development application.

2.2 Transition from Development Act 1993 to Planning, Development and Infrastructure (PDI) Act 2016

As of 19 March 2021, all new development applications lodged from that date onwards are required to be processed under the provisions of the PDI Act.

Only those development applications lodged prior to 19 March 2021 (and yet to be finally determined by that date) are to continue to be processed under the Development Act 1993 pursuant to Regulation 11(2) of the Transitional Regulations. Thus, this Policy applies to two differing legislative processes until such time as Council has fully transitioned to the PDI Act when there will remain no outstanding development applications for final determination under the Development Act.

2.3 Development applications being assessed under the Development Act

2.3.1 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 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

a. Owners/occupiers of adjacent land
    I. Any other owners/occupiers of land who, in the opinion of Council, will be directly affected to a significant degree by the development; and

    II. The public (the legislative requirement is through advertisement in the local paper).

2.3.2 Statutory requirements for public notification

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

a. The application
b. Any supporting plans, drawings, specifications or other documents or information provided to Council
c. Any statement of effect (where applicable).

Regulations 34(2) and 34(3) of the Development Regulations state that Council must provide to a member of the public a copy of any information available for inspection with a Category 2 or 3 development where:

a. A written request is made in person and within the inspection period (i.e. for 10 business days after notice is given by Council, as per Regulation 35 of the Development Regulations)
b. A fee fixed by Council is paid (as prescribed within Council's fees and charges register)
c. The person who requests the copy provides their name, address and contact details to Council
d. Verification of identification is provided (e.g. driver's license or similar)

As referred to within Regulation 34(4) of the Development Regulations, Council is not required to make available for public inspection, or for copy any of the abovementioned plans, drawings, specifications or other documents where:

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

In respect of Category 2 and Category 3 development applications:

a. Council will make the Regulation 34(1) of the Development Regulations documents available for public viewing through Council's website and at its office.
b. Application documents published on Council's website will be locked for inspection only. Printing, copying and downloading functions will be disabled to avoid infringing copyright on those documents
c. To ensure the future security of a building is not unreasonably jeopardised, floor plans of buildings will also not be displayed on Council's website.

2.4 Development applications being assessed under the PDI Act

2.4.1 Public notification

Under the PDI Act, development is assigned a category of either Accepted, Code Assessed, or Impact Assessed development. Code Assessed development may further fall into the following subcategories: Deemed to Satisfy or Performance Assessed.

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 RAP is the relevant authority for Performance Assessed development that requires public notification. The State Planning Commission or the Minister is the relevant authority for Impact Assessed development.

2.4.2 Statutory requirements for public notification

Regulation 49 of the PDI General Regulations provides that the relevant authority must ensure that the following documents, lodged with a Performance Assessed Development, are uploaded to the SA planning portal and are made reasonably available for public inspection:

a. The application
b. Any supporting plans, drawings, specifications or other documents or information provided to the relevant authority under section 119 of the PDI Act (without charge) at the principal office of the relevant authority for the inspection period. Pursuant to Regulation 50(10(a)(ii) of the PDI General Regulations the inspection period is 19 business days after notice is given by the relevant authority.

Regulation 49 of the PDI General Regulations states that the relevant authority must provide to any member of the public on request a copy of any information available for inspection with a Performance Assessed development where:

a. A request is made within the inspection period
b. A fee fixed by Council is paid (as prescribed within Council's fees and charges register)
c. The person who requests the copy provides their name, address and contact details to the relevant authority
d. Verification of identification is provided (e.g. driver's license or similar)

As referred to in Regulation 49(5) of the PDI General Regulations, 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:

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

2.5 Inspection 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 above for development applications under the Development Act or PDI Act, 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 public notification period

b. PDI Act:
    i. For any development application other than a Performance Assessed development which requires public notification, before and after 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.

Council has determined to now provide limited access to development application documents beyond the scope of the PDI 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, Council will provide access (by inspection only in the absence of permission of the copyright owner) 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 directly adjoining land (not separated by a road), (or by being the legal or professional representative of such a person). Access should 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.

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).

2.6 Development information requests made under the Freedom of information Act 1991

Requests for development application documents which are not made publicly available under the Development Act, PDI Act or this Policy may be made under the FOI Act subject Section 55 of the PDI Act that 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).

Council considers that the FOI Act applies to any copies of documents that Council holds external to the SA planning portal but notes that the Chief Executive of the Attorney General's Department is responsible for establishing and maintaining the SA planning portal, not Council.

Council will direct to the Attorney-General's Department all queries concerning purported or proposed applications under the FOI Act that seek access to documents held only in the SA Planning Portal and that are not held by Council external to the SA planning portal.

2.7 Copies of application documents for RAP Agendas and Minutes

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

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

Council will also publish the RAP agendas, employee reports and Minutes on its website.

Council will not publish copies of plans, reports and other documents which are attached to reports on its website. Furthermore, physical copies of such documents cannot be made available to members of the public without permission of the copyright owner.

2.8 Copies of application documents for Land Management Agreement Waiver Requests

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

Council will also publish its agendas, employee reports and Minutes on its website.

Council will only attach to its Agenda those parts of the Plans necessary for the Council to make a decision on the waiver request, that the whole plan set will not be provided.

2.9 Duplication of Documents and the State Records Act 1997

The State Records Act 1997 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.

2.10 Fees

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

3. Information Provision

Council Officers understand that from time to time constituents from outside the Council area may phone Council for advice on matters that do not pertain to development or applications within the District Council of Streaky Bay. Council Officers in these instances will not provide advice on such matters and they shall be referred to the relevant Council area.

4. Definitions

For the purposes of this policy the following definitions apply:

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
- The Minister 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)
- Any other prescribed work or activity but does not include any work or activity excluded by the Development Regulations from the ambit of this definition (e.g. significant trees, land divisions and/or land use).

RAP
Council's Regional Assessment Panel.

Copyright Act
Copyright Act 1968 (Cth)

Development Regulations
Development Regulations 2008

FOI Act
Freedom of Information Act 1991.

Official Record
Is defined in section 3 of the State Records Act 1997 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
Planning, Development and Infrastructure Act 2016

PDI General Regulations
Planning, Development and Infrastructure (General) Regulations 2017

Transitional Regulations
Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017.

5. Legislative Framework

There is no legislative requirement for Council to have a policy relating to this area. The following legislation applies to this Policy:

Copyright Act 1968
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 federal legislation has primacy over the state legislated PDI Act.

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

However, section 196 of the Copyright Act does allow for the assignment of copyright to another person. For the assignment of such rights to occur, the copyright owner must confirm in writing an agreement to transfer copyright to Council. Where such right is provided, Council may then reproduce the work in accordance with section 31(1) of the of the Copyright Act .

Section 3 of the Copyright Act is also relevant to this policy in that it allows for the reproduction of documentation if required for the commencement of judicial proceedings. Therefore, if evidence is provided to Council that judicial proceedings are pending, or currently underway, Council is in a position to provide the information requested without breaching copyright.

Development Regulations 2008
Regulation 34 of the Development Regulations requires Council to make available to the public for inspection copies of documents relating to development applications for Category 2 and 3 developments.

Freedom of Information Act 1991
Applications for disclosure of development application documents may be made pursuant to this Act.

Planning, Development and Infrastructure Act 2016
Section 55 of the PDI Act provides that the FOI Act does not apply to a document that is received, created or held under Part 4, Division 2 of the PI Act (namely the SA planning portal).

Planning, Development and Infrastructure (General) Regulations 2017
Regulation 49 of the PDI General Regulations requires a relevant authority to make available for inspection copies of documents relating to development applications for Performance Assessed development that requires public notification.

Development application details are publicly accessible on the SA planning portal pursuant to regulation 120(1) of the PDI General Regulations.

State Records Act 1997
Under this Act, Council has an obligation to maintain Official Records in its custody in good order and condition. This obligation applies not only to the capture, storage, maintenance and disposal of physical records, but also to records in electronic format.

5.1 Other references

Council's document including:

a. Fees and Charges Register

External document including:

a. Model Policy on the Interaction of the Development Act 1993, the State Records Act 1997 and the Freedom of Information Act 1991 with the Copyright Act 1968 (Cth).

This Policy is based on a model policy prepared by the Local Government Association for the Development Act 1993 and adopts a practical and risk management focused approach to balancing legislative obligations with managing and minimising risks of infringing copyright law.

6. Strategic Plan/Policy

6.1 Strategic Plan

A Healthy Natural Environment and an attractive built environment

A Council that is actively responsive to community needs and delivers financial sustainability, governance and leadership

7. Policy Implementation

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

8. Records Management

All records shall be kept and disposed of in accordance with Councils Records Management Policy and procedure and the current General Disposal Schedule.

9. Further Information and Policy Availability

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.streakybay.sa.gov.au

District Council of Streaky Bay
29 Alfred Terrace
Streaky Bay SA 5680

Copies will be provided to interested parties upon request. Email dcstreaky@streakybay.sa.gov.au

10. Document History

Version No	Issue Date	Description of Change	Date Endorsed
1.00		First Version	16 September 2024

11. Acknowledgment

I, _____ *(print full name)* have read and understood the District Council of Streaky Bay's <insert policy name> and I agree to abide by this policy which is outlined above.

Employee Signature: _____Date Signed: _____