



POLICY DOCUMENT

13.63.1

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| Policy Name | PRIVACY – PERSONAL INFORMATION AND DEVELOPMENT APPLICATIONS |
| Policy No | 13.63.1 |
| Reviewed By | Mandy Bowyer Executive Assistant - Communication |
| CEO Authorisation | Rob Donaldson CEO |
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1. PURPOSE

The Council is committed to a culture that protects privacy of individuals and will endeavour to protect the personal information it collects, stores, discloses and uses. This Policy outlines how the Council will adopt a “best practice” approach to the management of personal information and access to information.

The Privacy Act sets out the principles which must be followed by Commonwealth Government agencies and many private organisations in relation to the collection, maintenance and use of personal information. The provisions of the Privacy Act do not directly apply Councils within South Australia, however Council acknowledges that the Privacy Principles contained within the Privacy Act set an appropriate standard for privacy protection and this Policy is intended to achieve “best practice” consistency with those standards.

The provisions of the *Copyright Act 1968* creates property rights that Council are bound by, including the right to prevent copying of written and artistic works. Information frequently received, considered and retained by Councils such as engineering and other expert reports, plans, diagrams, drawings are protected by copyright, such that their reproduction, otherwise than in accordance with the *Copyright Act*, may give rise to an actionable copyright infringement.

2. SCOPE

This Policy applies to the personal information that Council collects and stores and the reproduction of documents under the Development Act 1993, Development Regulations 2008, State Records Act 1997 and Freedom of Information Act, and the provision of copies of relevant documents or personal information to the public.

3. DEFINITIONS

The following definitions will apply throughout this Policy:

“**the Council**” means City of Port Lincoln;

“**Access**” means providing to an individual, information about himself or herself that is held by the Council. This may include allowing that individual to inspect personal information or to obtain a copy;

“**Collection**” means gathering, acquiring or obtaining personal information from any source and by any means, including information that the Council has come across by accident or has not asked for;

“**Consent**” means voluntary agreement to some act, practice or purpose;

“**Disclosure**” means the release of information to persons or organisations outside the Council. It does not include giving individuals information about themselves;

“**Personal Information**” means information, documentation or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural living person whose identity is apparent, or can reasonably be ascertained, from the information or opinion, including a photograph or other pictorial representation of a person;

but does **not** include information that is:

- in generally available publications;
- in material kept in public records and archives such as the Commonwealth or State archives;
or
- in anything kept in a library, art gallery or museum for the purpose of reference, study or exhibition.

“**Use**” means the handling of personal information within a Council including the inclusion of information in a publication.

“**Work**” has the same meaning as this term in the Copyright Act. Ie a literary, dramatic, musical or artistic work.

4. COLLECTION AND USE OF PERSONAL INFORMATION

All personal information collected by the Council is to be used only for the purpose of conducting Council business in accordance with the Local Government Act, 1999 (and other relevant Acts under which the Council is charged with any responsibility) and in the provision of Council services to the City’s residents and/or ratepayers. This includes the assessment record (Local Government Act 1999 Section 172)

The type of personal information that is collected and held will depend on the services provided to residents and ratepayers, but may include: -

- Telephone numbers
- Name and address (both postal and residential addresses and e-mail addresses)
- Age &/or date of birth
- Property Ownership and/or Occupier details
- Details of resident’s/ratepayer’s spouse or partner
- Development Applications including plans of buildings
- Dog Ownership
- Electoral Roll details
- Pensioner / Concession Information
- Payment History

All information will be collected in a fair and lawful manner and as required/permitted by law. The Council is committed to ensuring that residents and/or ratepayers are aware of the purpose of collection of the information and aware that the collection is authorised or required by law.

In satisfying the collection and use of personal information obligations, which the Council has to its residents and/or ratepayers, the Council assumes that:

- a) any personal information provided by residents and/or ratepayers is free from errors and omissions, is not misleading or deceptive and complies with all relevant laws; and
- b) residents and/or ratepayers have the necessary authority to provide any personal information submitted to the Council;

The Council relies on the personal information provided to it. The Council may obtain information concerning ratepayers or residents from a number of sources including Centrelink, the State Electoral Office, Officer of the Valuer General, SA Water, and from ratepayers and residents. The Council may not check or verify the accuracy of any personal information it obtains from residents and/or ratepayers or other persons.

It is the responsibility of residents and/or ratepayers to provide the Council with details of any changes to their personal information as soon as reasonably practicable following such change in order to maintain accurate information.

In some instances the personal information held by the Council about residents and/or ratepayers may incorporate or summarise views, guidelines or recommendations of third parties. The Council will endeavour to assemble and record such personal information in good faith, but cannot guarantee that it will necessarily involve a considered review of the information.

5. MAINTENANCE AND STORAGE OF INFORMATION

Council will take reasonable steps and use appropriate security mechanisms to ensure that the personal information held by Council is protected from misuse and loss, and from unauthorised access, modification or disclosure.

Council will make every effort to ensure that its records of an individual's personal information are up to date and accurate, however this may not always be the case.

The Council does not track residents and/or ratepayers Internet activity when they visit the Council's website.

6. DISTRIBUTION OF PERSONAL INFORMATION

The Freedom of Information Act 1991 (Act) came into effect on 1st January 1992. It extends to every person the right to:

- obtain access to information held by SA State and Local Government
- ensure that those records are not incomplete, incorrect etc

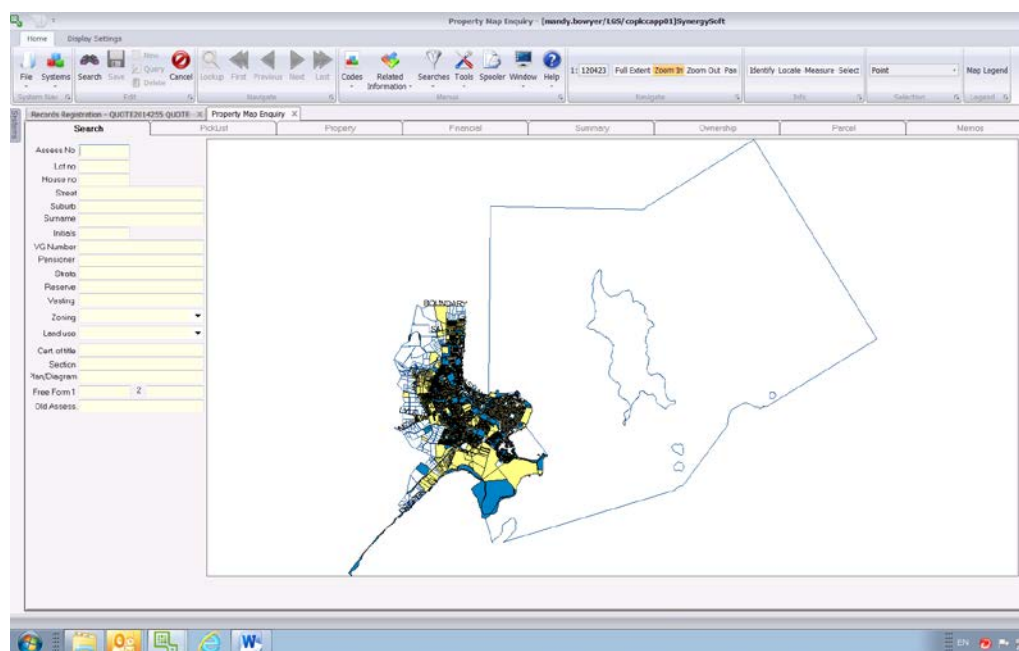
Exemptions apply, including where disclosure of the held information would breach privacy, or cause damage to business, intergovernmental relations or law enforcement.

6.1. **Generally available Public Information**

Information that is generally available in publications, such as the telephone book, Voters Roll, Councils Assessment Record (Local Government Act 1999 Section 174) or is available through public records may be given to third parties.

For example:

This includes Personal Information displayed on SynergySoft's Mapping Module, Property Map Enquiry, Property Tab which displays the following information. Staff need to be aware of any memos which may be displayed such as a "silent address".



6.2. **Disclosure of Personal Information to Third Parties**

The Council will not permit the disclosure of any other personal information it holds on residents and/or ratepayers to third parties, except:-

- where a written request for minimal personal information, such as a postal address for fencing purposes, about a third party has been made, and if deemed necessary that third party has been contacted by Council and has subsequently given their written approval for the information to be supplied

(13-36-T2 – Request for Personal Information)

- in regard to a request for 'significant' information, such as a third party development application documents, a request for information should be made under the Freedom of Information Act 1991. Fees are applicable for the lodgement of the request and for the time taken for council staff to process and make a determination on the request. The lodgement fee is non-refundable even if the request is denied once assessed. The copying of plans may be restricted by copyright laws.
- Plans are protected by the copyright laws and any person requesting a copy of the plans should obtain written consent from the copyright owner ie architect.

- Where the owner of copyright cannot be located (e.g. where an architect is no longer in business, deceased or not contactable), Council may provide copies of the plans to the person who requested them, provided that the person requesting the plans has a reasonable basis for their request.

(13-40-T1 – Request for Documentation under FOI)

- A current owner of a property MAY inspect information/plans etc about their property. A charge may be made for any copies as per our fees and charges schedule and subject to copyright laws.

(13-36-T3 – Request for Personal Information Ratepayer or Resident)

- where the provision of personal information is for the purpose of distributing materials for the sole purpose of and on behalf of the Council (eg the provision of address data for use by a mailing service provider to post Rates Notices);
- where the third party has been contracted by the Council to provide advice or services for the sole purpose of assisting the Council to provide benefits to residents and/or ratepayers (eg State Electoral Office, Office of the Valuer General, insurers);
- where the Council is required by legislation to provide personal information to a third party (eg provision of personal information to the State Electoral Office) or to the public at large in accordance with the Local Government Act or to an applicant under the Freedom of Information Act where the information is not otherwise exempt; and
- where the resident and/or ratepayer has been advised of the Council's usual practice of disclosing personal information to that third party or a third party of that type for a particular purpose and the disclosure is consistent with that purpose.
- as part of the public notification required, and related to lodgements of a development application.

Before the Council provides personal information to a third party service provider that is subject to the provisions of the Privacy Act, that supplier will be required to provide a signed 'Privacy Undertaking' to Council stating that it will comply with the Privacy Act and the National Privacy Principles in respect to the collection, use and handling of personal information supplied by the Council.

The Council does not accept any responsibility for any loss or damage suffered by residents and/or ratepayers because of their reliance on any personal information provided to them by the Council or because of the Council's inability to provide residents and/or ratepayers with any requested personal information.

Before relying on any personal information the Council provides to residents and/or ratepayers, the Council expects that residents and/or ratepayers will first seek confirmation from the Council about the accuracy and currency of such personal information.

7. DEVELOPMENT ACT 1993

During the assessment of a development 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 or viewed electronically, and stored and saved into the Council's records management system. As the reproduction of works is necessary for development assessment purposes, such works can lawfully be reproduced by the Council for internal purposes.

7.1. *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;

- The application;
- any supporting plans, drawings, specifications or other documentation or information provided to Council; and
- Any statement of effect (where applicable).

Regulation 34(2) and regulation 34(3) state 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; and
- A fee fixed by the Council is paid; and
- The person who requests the copy provides their name, address and contact details to Council.

Accordingly, the 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.

The Council will not publish regulation 34(1) documents on its website. If a member of the public wishes to inspect and/or obtain a copy of a development application document during its public notification period, it is expected that the person will attend the Council's office in person. Where a member of the public is not able to attend the Council office in person (eg: they reside a significant distance from Port Lincoln), copies can be provided subject to the provision adequate identification (eg: Driver's Licence or Vehicle registration details).

If a member of the public requests copy of documents on a development application outside of the notification period the Council will not provide copies of these documents.

7.2. *Council Development Assessment Panel (CDAP) Agendas*

CDAP agendas contain officer reports and 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 has 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 officers reports and other attachments to that agenda.

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 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 are locked for inspection only and printing, copying and downloading functions will be disabled to avoid infringing copyright in those documents.

Development Application forms and representations are published on the Council's website along with other attachments to CDAP agendas. If you are concerned about the publication of your personal details on the Council's website in this manner, please contact the Council on 8621 2300 or email plcc@plcc.sa.gov.au

7.3. Development Application Register

The Council is required to keep a register of development applications, pursuant to regulation 98(1) and from 1 January 2014 must be published on the Council's website.

The register is required to contain information about development applications, not the application documents themselves. The register should contain:

- the name and address of the applicant (or of each applicant);
- the date of the application;
- the date on which the application was received by the Council or other relevant authority;
- a description of the land which is the subject of the application;
- a brief summary of the matters, acts or things in respect of which any consent or approval is sought;
- details of any referral or concurrence on the application;
- whether any decision is made on the application by the Council, a regional development assessment panel, the Development Assessment Commission or the Governor (where appropriate);
- any decision on the application;
- in the case of an application for building rules consent – the fee or fees payable;
- the date of the commencement of any building work and the date of the completion of any building work; and
- if any decision on the application is the subject of an appeal, the result of the appeal.

The Council must make the register available for inspection by the general public (no fee).

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.

The Council will provide copies of documents kept for the purposes of its register where to do so would not constitute a copyright infringement.

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.

7.4. Inspection and Copies of Documents Relating to Approved Developments

In the case of applications that have been assessed and a decision made, regulation 101(1) obliges the Council to retain certain development application documents relating to building work only (i.e. not 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”*.

Further, regulation 101(a1) requires the Council to retain a copy of each document provided to it by a private certifier in relation to any application for development plan consent assessed by the private certifier.

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

Regulation 101(4) states that a person may, on payment of a fee fixed by Council, obtain a copy of any document retained by Council under regulation 101 (a1) or 101(1).

This requirement is subject to regulation 101(5) which states that Council is not required to make available any documents, such as plans, if to do so would;

- in the opinion of the Council, unreasonably jeopardise the present or future security of a building;
- Involve an infringement of copyright in matter contained in a document; or
- Constitute a breach of any other law.

Accordingly, where a person does not have permission from the owner of copyright in plans and other documents held by the Council under regulation 101(a1) or 101(1), the Council is not obliged to provide a copy of that document to that person.

However, in 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 owner of copyright in the documents;
- is the current owner of the building;
- is the applicant who obtained development authorisation of the building;
- requires the documents for the purposes of litigation, or to seek legal advice;
- has obtained a written permission from the owner of copyright in the document for it to be reproduced; 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.

8. DISABILITY CLAIMS AND FINANCIAL HARDSHIP APPLICATIONS

Personal information obtained in relation to claims for disability benefits and financial hardship claims will be used solely for the purposes of facilitating the claim to which the personal information relates, unless the residents and/or ratepayers have specifically given permission in writing for it to be used for other applications or to be provided to a third party.

9. ACCESS AND AMENDMENT TO PERSONAL INFORMATION

Residents and/or ratepayers who wish to access their own personal information that the Council holds can do so by applying to Council in Writing. These requests will be dealt with as soon as is reasonably practicable, having regard to the nature of the information requested. The person making the request will need to satisfy Council as to his/her identity prior to the information being released and may need to submit a written request and may be requested to pay a fee.

When an enquiry is not made in person (eg: by fax or email), information will only be sent to the current postal or residential address or be collected from the Civic Centre administration office with prior arrangement, provided that suitable identification is provided at time of collection.

If resident and/or ratepayer can show that the personal information held by Council is not accurate or complete, it will be amended by Council staff.

10. SUPPRESSION OF PERSONAL INFORMATION

Personal information may be suppressed from the Council's assessment record and from the Council's Voters Roll where the CEO of the Council is satisfied that the inclusion of the name and/or address on the assessment record and/or roll would place at risk the personal safety of a resident / ratepayer, a member of that person's family, or any other person.

Enquiries regarding suppression of personal information should be directed to CEO in the first instance.

11. COMPLAINTS

Residents and/or ratepayers who have any concerns regarding how the Council handles personal information or require further information should contact the Manager Corporate Governance in the first instance.

If the Manager Corporate Governance cannot satisfy the residents and/or ratepayers concerns, the Residents and/or Ratepayers may lodge a formal complaint. Complaints should be made in writing to:

Chief Executive Officer
City of Port Lincoln
PO Box 1787
PORT LINCOLN SA 5606

12. RELEVANT DELEGATED POWERS AND DUTIES

Any actions or decisions made regarding this policy will be enacted upon as per Council's current Delegations Register.

13. REVIEW

This policy shall be reviewed by the City of Port Lincoln within twelve months after the conclusion of each periodic election, or on significant change to legislation or aspects included within this policy.

14. REFERENCES

Local Government Act, 1999

Privacy Act 1988

Development Act 1993

Development Regulations 2008

Freedom of Information Act 1991

State Records Act 1997

Commonwealth Copyright Act 1968

13-36-T2 – Request for Personal Information

13-40-T1 – Request for Documentation under FOI

13-36-T3 – Request for Personal Information Ratepayer or Resident