Access to Documents Relating to Development Applications Policy

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Responsible Officer	Director – Development and Community Services
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1. Purpose

The purpose of this Policy is to outline Council's position on providing access to development application information, including plans and associated documents, in response to requests from property owners or third parties. The Policy seeks to provide clarification on what documents can be viewed in response to amendments to the State Government's Planning and Development system that changed in 2021. Any powers or responsibilities referred to in this Policy may also be carried out by an authorised delegate acting on behalf of the Council or relevant authority.

2. Definitions

2.1 **Building Rules** means the Building Code of Australia, regulations under the *Planning, Development and Infrastructure Act 2016* (PDI Act) that regulate the performance, standard or form of building work, any regulations that relate to designated safety features and the Ministerial Building Standards.

2.2 **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), or, any other prescribed work or activity but does not include any work or activity excluded by the *Development Regulations 2008* from the ambit of this definition (e.g. significant trees, land divisions and/or land use).

2.3 **CAP** means Council Assessment Panel.

2.4 **Code** means the Planning and Design Code under the PDI Act.

2.5 **Copyright Act** means the *Copyright Act 1968* (Cth).

2.6 **Development Act** means the *Development Act 1993*.

2.7 **Development Regulations** means the *Development Regulations 2008*.

2.8 **FOI Act** means the *Freedom of Information Act 1991*.

2.9 **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.

2.10 **PDI Act** means the *Planning, Development and Infrastructure Act 2016*.

2.11 **PDI General Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017*.

2.12 **Transitional Regulations** means the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017*.

3. Policy

3.1 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:

3.1.1 Reproduction is necessary by way of legal obligation.

3.1.2 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 Council and/or Council Assessment Panel to approve or refuse a development application.

3.2 Transition from *Development Act 1993* to *Planning, Development and Infrastructure Act 2016*

3.2.1 As of 19 March 2021, the management of development applications transitioned to the State Government's Planning SA Portal requiring all development applications to be processed under the provisions of the PDI Act.

3.2.2 Applications that were granted planning consent under the Development Act, transitioned to the PDI Act for the purposes of granting variations or Development Approval. They are therefore then subject to the limitations of the PDI Act.

3.3 Development Applications assessed under the *Development Act 1993*

3.3.1 Mid Murray Council has determined the category of any remaining applications for planning consent under the Development Act. As a result, there are no development applications that require public notification under the Act.

3.3.2 All documentation related to development applications determined under the Development Act and Regulations are managed and retained as Council records. A search of these documents can be undertaken via a *"Request to View or Copy Development Application Documents"*. This may negate the need to undertake a request under the *Freedom of Information Act*. In circumstances when permission has been obtained from copyright holders, copies can be provided at a cost.

3.4 Development Applications being assessed under the PDI Act

3.4.1 Public Notification

3.4.1.1 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 sub categories: Deemed to Satisfy or Performance Assessed.

3.4.1.2 Performance Assessed development is required to be publicly notified unless it comprises a class of development excluded from public notification as specified in the Planning and Design Code.

3.4.1.3 The Assessment Manager is the relevant authority for Performance Assessed development that does not require public notification, whereas the CAP is the relevant authority for Performance Assessed development that requires public notification.

3.4.1.4 The State Planning Commission or the Minister is the relevant authority for either Restricted or Impact Assessed development.

3.4.2 **Statutory requirements for public notification**

3.4.2.1 Regulation 49 of the PDI General Regulations provides that the relevant authority must ensure that the following documents, lodged with Performance Assessed development, are uploaded to the SA Planning Portal and are made reasonably available for public inspection (without charge):

- The application;
- Any supporting plans, drawings, specifications or other documents or information provided to the relevant authority under Section 119 of the PDI Act;

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.

3.4.2.2 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 request is made within the inspection period.
- A fee fixed by Council is paid (as prescribed within Council's Fees and Charges Register).
- The person who requests the copy provides their name, address and contact details to the relevant authority.
- Verification of identification is provided (driver's licence or similar).

3.4.2.3 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:

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

3.5 Access to documents for landowners

3.5.1 Regulation 116A allows for an owner of land to obtain from Council a copy of any plans, drawings, specifications or other documents or information retained on the SA Planning Portal for any development authorisation authorised under Section 102 of the PDI Act.

3.5.2 Documentation does not need to be supplied if:

- There are concerns relating to the security of a building;
- A breach of Copyright would occur; or
- Another law would be breached.

3.6 Inspections and copies of documents outside of public notification requirements

3.6.1 While Council or the relevant authority have a legal obligation under the PDI Act to provide public access to certain development application information as listed in the statutory requirements above for development applications under the PDI Act, this obligation does not apply in the following cases:

- Accepted development – no access to plans and documents.
- Deemed to Satisfy – no access to plans and documents.
- Performance Assessed development not requiring notification – no access to plans and documents.
- Performance Assessed development requiring notification – no access to plans and documents before or after the public notification period.

- Restricted or Impact Assessed development – no access to plans and documents before or after the public notification period.

3.6.2 Regulation 101(4) 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 provision has not been carried forward into the PDI Act or its associated Regulations.

3.6.3 Despite the absence of a legislative requirement, Council may, at its discretion, allow controlled access to development application documents beyond the scope of the PDI Act, where appropriate. This may occur in limited circumstances, such as:

- Requests from property owners or third parties seeking to verify whether a development application has been processed correctly.
- Situations where access supports transparency or resolution of disputes, without compromising privacy, security, or legal obligations.

3.7 Discretionary Access to Development Application Documents

3.7.1 Council has determined to provide limited access to development application documents (including planning and building consent documents) beyond the scope of the PDI Act regime.

3.7.2 Outside of the public notification processes, Council will provide access to members of the public to development application documents held by Council on the following basis:

3.7.2.1 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 adjoining land (or by being the legal or professional representative of such a person), and they must provide their name and address which will be recorded by Council staff. A *"Request to Inspect Development Application Documents"* must be submitted.

3.7.2.2 Access will not be given to documents that, in the opinion of Council, would unreasonably jeopardise the present or future security of a building.

3.7.2.3 Access to documents will primarily be limited to site plans and elevations. Additional documentation may be provided on a case-by-case basis, where sufficient justification is given to demonstrate the need.

3.7.2.4 As documents lodged in the SA Planning Portal are not Council records, access is provided by inspection only. Copies will not be provided, and photographs or recordings of application documents are not permitted.

3.8 Limitations of Public Access via the SA Planning Portal

3.8.1 The SA Planning Portal contains details of development applications 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, view documents that were previously available during a public notification process, or retrieve documents that were accessible under Regulation 101 of the Development Regulations (now repealed).

3.8.2 This means that even if documents were previously made available for public inspection or purchase, they are not accessible through the SA Planning Portal under the current legislative framework.

3.9 Development Information requests made under the Freedom of Information Act 1991

3.9.1 Requests for development application documents which are not made publicly available under the Development Act, PDI Act or this Policy may in certain circumstances be made under the FOI Act. However, it is important to note that:

- Section 55 of the PDI Act provides that the FOI Act does not apply to documents received, created or held under Part 4, Division 2 of the PDI Act (namely the SA Planning Portal).
- All development application documents under the PDI Act are stored within the SA Planning Portal (including plans, associated documentation, emails etc.).

- The Chief Executive Officer of the relevant department is responsible for maintaining the SA Planning Portal, not Council.

3.9.2 All enquiries relating to applications under the FOI Act in relation to applications assessed under the PDI Act will be directed to the Attorney-General's Department. Given these documents are exempt from FOI, it is unlikely that the Attorney-General's Department will release these documents.

3.9.3 FOI requests for applications made under the Development Act are processed by Council.

3.10 Copies of application documents for CAP Agendas

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

3.10.2 Due to this legal obligation, Council enjoys an implied licence of necessity for providing copies of such documents to CAP members and employees attending a CAP meeting. Council will also publish the CAP agendas on its website. The agenda, accompanying reports and attachments will be locked with printing and copying functions disabled to avoid infringing copyright on any application documents. Furthermore, physical copies of such documents cannot be made available to members of the public without permission of the copyright owner.

3.11 Fees

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

3.11.2 Fees relating to Freedom of Information applications are determined under the Act and are Gazetted prior to July 1 each year.

4. Policy Responsibility

The Director – Development and Community Services is responsible for ensuring the proper operation of this Policy.

5. Availability/Accessibility

5.1 This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: www.mid-murray.sa.gov.au.

5.2 This Policy is available for inspection at Council's principal office during ordinary business hours. Hard copies, for a fee in accordance with Council's Schedule of Fees and Charges, can be provided upon request.

6. Legislative Framework / Other References

6.1 *Copyright Act 1968* (Cth)

6.2 *Development Act 1993*

6.3 *Development Regulations 2008*

6.4 *Freedom of Information Act 1991*

6.5 *Planning, Development and Infrastructure Act 2016*

6.6 *Planning, Development and Infrastructure (General) Regulations 2017*

6.7 *State Records Act 1997*

6.8 *Council's Fees and Charges Register*

7. Document History

This Policy shall be reviewed at least every four (4) years or more frequently if legislation or Council requires.

Version	Adopted	Minute	Description of Change
1	18 March 2025	C03-25/015	Adopted
2	17 November 2026	C11-26/015	Removal of *Development Act 1993* transitional development application reference and administrative and drafting amendments.