



Improving Access to Planning Documents

General Practice Note — revised October 2007

This practice note provides guidance to planning and responsible authorities about making available copies of plans, personal information and other material relating to planning applications and planning scheme amendments. It might be necessary for planning and responsible authorities to obtain further detailed advice on some points covered by this practice note.

Improving access to information

The objectives of the planning framework in Victoria, as set out in the *Planning and Environment Act 1987*, envisage an accessible and transparent process in relation to the making and enforcement of planning decisions. However, this needs to be balanced with considerations such as privacy, copyright and freedom of information where other legislation affects the way information and documents are handled by planning and responsible authorities.

The purpose of this practice note is to establish some consistency in the way that planning and responsible authorities adhere to the principles of accessibility and transparency in the planning process while meeting their obligations under other relevant legislation such as the *Information Privacy Act 2000*, the *Copyright Act 1968* and the *Freedom of Information Act 1982*. It might be necessary for planning and responsible authorities to obtain further detailed advice on these matters.

Requirements under the *Planning and Environment Act 1987*

The *Planning and Environment Act 1987* requires planning and responsible authorities to provide access to a number of planning documents. The following table lists the relevant requirements.

Type of Document	Requirement under <i>Planning and Environment Act 1987</i>
Submissions to planning scheme amendments	s21(2) requires a planning authority to make a copy of every submission available at its office for any person to inspect during office hours free of charge for a limited time
Planning Registers	s49 requires responsible authorities to keep a register in the prescribed form of all applications and decisions for permits. The responsible authority must make the register available during office hours for any person to inspect free of charge
Applications for Planning Permit	s51 requires the responsible authority to make applications for planning permits and the prescribed information available for any person to inspect during office hours free of charge for a limited time
Objections to Planning Applications	s57(5) requires the responsible authority to make a copy of every objection available at its office for any person to inspect during office hours free of charge for a limited time

An issue occasionally arises as to the extent to which planning or responsible authorities should provide photocopies of this material, having regard to the cost of copying, or possible copyright in the plans. Issues also arise as to the privacy implications of planning and responsible authorities making personal information available during the planning process.

Making documents available

In making documents available, planning and responsible authorities must meet the requirements of the *Planning and Environment Act 1987* (refer to table above). The Act requires that certain documents must be made available at the offices of planning and responsible authorities for inspection.

In addition to these legislative requirements, planning and responsible authorities should also facilitate, to the fullest extent possible, access to information by those reasonably involved in the planning decision-making or enforcement process. Access to documents ensures that decision-making is open and transparent. Planning and responsible authorities are encouraged to establish clear and reasonable policies for access to documents.

Accordingly, a person with an interest in a proposal should be encouraged to view an application or amendment by visiting the office of a planning or responsible authority, gain advice from its officers where necessary, and take away a copy of any documents which will assist them in forming an opinion.

As well as providing access at their premises, planning and responsible authorities can provide copies of relevant documents on their websites to allow for greater accessibility.

Where a request is made for access to a document outside the time period required by the *Planning and Environment Act 1987* procedures under the *Freedom of Information Act 1982* apply.

General principles

The following general principles should be taken into consideration by planning and responsible authorities when determining whether access to planning documents should be provided:

- decision-making should be open and transparent
- requirements in the *Planning and Environment Act 1987* that specifically require access to documents should be complied with at all times.
- subject to statutory constraints (including those imposed by the *Information Privacy Act 2000*, *Health Records Act 2001* and *Copyright Act 1968*) access should be made available to all information required for a person to form an opinion on a planning application, planning scheme amendment or a submission from a third party and to assist them to make a submission if they wish.

The general principles can be achieved by:

- removing impediments which delay the process or which prevent a person from obtaining relevant information
- making applicants aware of these principles
- making third parties aware that documents which they submit may be made available to other parties (including the applicant) or members of the public
- making all parties involved in the planning process aware of the purpose for which available information may be used, so as not to breach copyright or other legislation.

Consideration of Copyright

The *Commonwealth Copyright Act 1968* has a number of potential implications for planning documents, particularly in relation to the reproduction of building and architects' plans.

In circumstances where plans are reproduced to obtain professional advice or as part of a legal process (for example, a VCAT appeal), specific exemptions under the *Copyright Act 1968* may apply.

In other circumstances, there is legal authority for the view that the draftsman of the plans has given an implied licence to the applicant or proponent to use those plans within the planning process, and the applicant or proponent has given an implied licence to a planning or responsible authority to use the plans for the purpose of a public planning process including relevant community consultation.

Provided plans or other documents are used only for these limited purposes, no breach of copyright will occur. Should a breach of copyright occur due to a person's improper use of plans or other documents, there is an ability for the owner of copyright to take civil action against the person committing the breach. Planning and responsible authorities should take reasonable steps to make people aware of how copied documents may be used.

Photocopying of planning documents

While the *Planning and Environment Act 1987* does not require planning and responsible authorities to provide facilities for copying relevant documents, the provision of photocopying facilities ensures greater accessibility of planning documents. In providing these facilities, it is reasonable that a 'user pays' principle apply to the copying of plans and other materials. Planning and responsible authorities may therefore wish to charge a minimum photocopying fee in order to cover reasonable administrative and service costs and to discourage frivolous requests.

As a general principle, where a photocopy of a plan or document which accompanies an application or amendment is being provided, a planning or responsible authority should only seek to recover its reasonable photocopying charges.

In circumstances where significant officer time is involved in seeking out relevant files and arranging for photocopying of reports or other documents, a reasonable additional administrative charge may be appropriate. The *Local Government Act 1989* enables councils to set appropriate fees. Planning and responsible authorities are encouraged to establish clear pricing policies for access to documents.

How should confidential documents be dealt with?

A planning or responsible authority may receive a document or report which does not form part of an application or amendment and is commercial-in-confidence or other documents or correspondence which are confidential, subject to privilege, or otherwise of a sensitive nature. If the confidential document is not required to be offered for inspection

under the *Planning and Environment Act 1987*, then a planning or responsible authority should ensure that the document is not inspected or copied other than in accordance with the *Freedom of Information Act 1982*.

How should council reports be dealt with?

Council officer's reports are generally regarded as public documents which should be made available. Council reports should contain all relevant information to enable council to make a decision on an application or amendment, including a summary of all relevant technical advice.

Online access to documents

Increasingly, planning documents are being made available on-line. Making planning documents available in this manner is consistent with the guiding principle of facilitating to the fullest extent access to information.

Online versions of planning registers, electronic copies of applications, plans, objections and council reports can all be made accessible from websites.

While it is useful to have information available online, planning and responsible authorities need to address copyright implications as well as weighing up the privacy aspects of having personal information accessible. Consideration should be given to the ability to fulfil the required function with de-identified data, to avoid any unnecessary intrusion on privacy.

Consideration of privacy

Victoria's *Information Privacy Act 2000* (IPA) also places requirements on responsible and planning authorities in relation to the way that personal information (such as names, addresses and opinions) is used and disclosed. The Act's Schedule sets out ten Information Privacy Principles to regulate the collection, use, disclosure, transfer, access, correction and disposal of personal information.

In handling personal information, it is important that a planning or responsible authority:

- **collect** only the information that is necessary
- **advise** the provider of the information why it is needed and how it will be used and disclosed
- **use and disclose** the information only for the purpose for which it was collected, and
- **secure** the information against loss or unauthorised access.
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Section 6 of the IPA, however, provides that if a provision of the IPA is inconsistent with a provision made by or under any other Act, that other provision prevails. Accordingly, the specific requirements of the *Planning and Environment Act 1987* to make planning documents available (refer to table) apply, notwithstanding the IPA's requirements.

More advice about information privacy can be obtained from the Office of the Victorian Privacy Commissioner – www.privacy.vic.gov.au.

Useful publications include:

- *Guidelines to the Information Privacy Principles*
- *Website Privacy – Guidelines for the Victorian Public Sector*, May 2004
- *Public Registers and Privacy – guidance for the Victorian Public Sector*, August 2004
- *Objectors, Submitters and Privacy Info Sheet 01.05*, July 2005
- *Exemptions from the Information Privacy Act Info Sheet 02.06*, May 2006

The *Health Records Act 2001* also imposes information handling requirements in relation to “health information” which is a particular type of personal information.

This Act will be relevant where the health information of a person is discussed in a planning document. For example, an objection letter from a person might explain that the objector has a medical condition that will be aggravated if a particular development is approved. Such a letter would contain health information and any copying of that letter must comply with the *Health Records Act 2001*.

More advice about the requirements of the *Health Records Act 2001* can be obtained from the Health Services Commissioner – www.health.vic.gov.au/hsc/.

Recommended procedures

Lodging applications and amendments

Applicants or proponents should be made aware that any material submitted by them will be made available for inspection or may be copied to assist any interested person to form an opinion on the planning application or planning scheme amendment. They should also be informed if this information will be made available online. The following information may be added to application forms in addition to the prescribed information:

‘Any material submitted with an application including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any concerns, please contact council’s planning department.’

For convenience of photocopying, planning and responsible authorities should require that applicants or proponents submit a set of A4 or A3 plans (including site analysis plans if appropriate) suitable for photocopying. If appropriate, these plans should be marked ‘not to scale’ and should be provided for the purpose of reproduction and distribution to interested persons in connection with consideration of the application or amendment.

Public notice of permits and amendments

When sending out public notices, third parties should be made aware that any material submitted by them may be copied for the applicant or any other person. The following paragraph should be included with any notice given in addition to the prescribed information:

‘Please be aware that copies of objections or submissions received may be made available, including electronically, to any person for the purpose of consideration as part of the planning process. If you have any concerns, please contact {insert name/ position} on {insert Tel number}.’

In other dealings with submitters (such as acknowledging receipt of a submission) planning and responsible authorities can repeat this advice.

Providing copies of documents

If a request for a copy of plans or other documents is received, the planning or responsible authority should inform the person making the request of the purposes for which the documents may be used. The planning or responsible authority should include a message to this effect on the photocopied documents. By doing so, the planning or responsible authority can be seen to have taken reasonable steps to inform recipients of possible copyright or other issues. A suitable form of words is:

‘This copied document is made available for the sole purpose of enabling its consideration and review as part of a planning process under the *Planning and Environment Act 1987*. The copy must not be used for any other purpose.’

Planning information provided online

Where planning documents are provided online, a similar message to that suggested in 'Providing copies of documents' above, should be used to explain that the use of documents is limited to purposes under the *Planning and Environment Act 1987*.

Where a planning registry is available online, planning and responsible authorities may wish to use an agreement to limit inappropriate use of the information, for example:

'A condition of use of this Online Registry is that you will not facilitate direct marketing to a property listed on this registry. Do you accept this condition?'

Privacy collection statements

Information Privacy Principle 1 in the Schedule of the *Information Privacy Act 2000* sets out the requirements for collection of personal information. Many councils already have general privacy statements or notices, however councils should also consider using a collection statement that is particular to their role as a planning and responsible authority.

Collection statements should be provided at or before the time a planning or responsible authority collects personal information from an individual. Practically speaking, planning and responsible authorities should make their collection statements available when an application is made, at the time a proposal is advertised, when a submission is invited or at the first point of contact with an individual.

Planning and responsible authorities should seek their own advice about appropriate wording for collection statements, however the following example is a useful starting point:

'The information you provide to Council will only be used for the purpose for which it is submitted in accordance with the *Planning and Environment Act 1987*. The information, including personal information, may be disclosed to other parties or members of the public as part of the planning process. If you have any concerns, please contact Council's Privacy manager on {insert Tel number}.'

A correctly worded collection statement clears the way for appropriate use and disclosure of personal information by creating a reasonable expectation in the person who provided the information about how it will be used and who else will see it. Potential privacy complaints can be avoided by a well-formed collection statement.

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