



# Copyright and the GIPA Act

## FAQs for local councils

knowledge

update

May 2011

The GIPA Regulation requires local councils to provide members of the public with access to information about development applications. This information may be protected by copyright.

**This knowledge update provides answers to some questions asked by local councils concerning the practical implications of following the advice provided by the OIC in the knowledge update entitled “Copyright and compliance with the GIPA Act”.**

### 1. Does copyright apply to other material associated with a DA?

Yes. Specialist reports, surveys, landscape design plans and drawings are all likely to be protected by copyright.

### 2. What is not protected by copyright?

Copyright does not protect ideas, styles, people, animals or information about things, even if the things being described are protected by copyright. For example, it is not a breach of copyright for councils to publish descriptions of proposed developments using information taken from architectural plans, eg, second storey addition comprising two bedrooms with balcony off main bedroom, bathroom, walk in wardrobe, etc. Nor would it be a breach of copyright to refer to colours, building materials, plants, etc.

The copyright owner's rights relate only to specified activities, such as reproduction, publication, adaptation or performance.

Copyright does not prevent people from simply looking at the work.

### 3. Can documents be protected by copyright even if there is no copyright notice on them?

Yes. Material such as literary, artistic or musical “works” are protected by copyright automatically

once they are in “material form” (eg, written down, printed, or saved as an electronic file). The presence of a copyright notice on architectural plans or other documents does not confer copyright protection: it merely highlights the fact that the material is protected by copyright and acts as a reminder. It may also have some benefits in legal proceedings for infringement.

### 4. Does copyright ever expire?

Section 33 of the *Copyright Act 1968* (Cth) states that generally, for published works, copyright expires 70 years after the end of the calendar year in which the creator dies. Where copyright material has not been published, in general terms its copyright protection lasts indefinitely. This may often be the case with DA material such as architectural plans that are unlikely to have been published.

There are certain specific exceptions to this general provision, particularly with regard to photographs. Therefore, it is advisable to seek specialist advice if councils are uncertain.

Where copyright is owned by a company, and the work is published, the duration is generally still related to the lifespan of the creator, plus 70 years.

### 5. What is the effect of copyright expiring?

Once expired, copyright cannot be revived. Therefore, councils are free to copy or publish material in which copyright has expired.

### 6. Whose responsibility is it to ask the copyright owner for permission?

Generally, asking for permission is the responsibility of the person who will make the copy (or other copyright use) of the material. If councils are making

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the copies, they are the ones who need to obtain permission. Members of the public would need permission to make the copies, unless they could rely on a fair dealing exception (see question 7 below).

Councils should keep in mind that DA information remains open access information, and they have an obligation to provide access to the information despite copyright provisions. As noted above, copyright does not prevent people from looking at the material, but affects the manner and form in which access is provided.

## 7. If people insist on having copies, what should we tell them?

If a council has obtained permission from the copyright owner, or has a policy of requiring DA applicants to provide multiple copies, it may be able to provide copies to members of the public.

In other cases, councils may provide the public with access to the material but may not make copies for them. Members of the public may be entitled to make copies (by hand, photograph or photocopy) as a fair dealing for research or study, or a fair dealing for criticism or review, under sections 40 or 41 of the Copyright Act.

Councils may make photocopiers available in the area where people access DAs. If they do so, they should ensure that information on copyright obligations is also available (including the notice mentioned in question 8 below) and that council staff do not in any way authorise members of the public to make copies, or give them any advice on copyright issues.

When asked about copying plans or other material in DAs that is likely to be protected by copyright, council staff should say something like:

*“If you want to make a copy, please look at the copyright notice first. I can’t give you advice on whether you would infringe copyright. If you need advice, you need to talk to a lawyer”.*

## 8. Should we put a copyright notice near our photocopier?

Placing a notice near a photocopier that can be used by members of the public alerting them to the Copyright Act is a good idea, since agencies can be liable for authorising or allowing breaches of the Copyright Act. While such a notice will not indemnify councils against liability for authorising breaches of

copyright, it will show that council has taken steps to prevent a breach of the law.

Schedule 3 to the *Copyright Regulations 1969* (Cth) contains a prescribed form of notice that can be displayed near a photocopier. That notice is attached to this knowledge update.

In addition to that notice, councils may wish to prominently display the following words:

*“For copyright reasons, the council is unable to make copies of DAs for members of the public. If you wish to make a copy, please read the copyright notice provided first. Note you may need to get permission from the copyright owner. If you need advice, please contact your solicitor. The council cannot advise you about copyright issues”.*

## 9. Can we give copies of DA approved plans to people who’ve bought the property to which the plans relate?

As outlined above, if the council has a policy of requiring multiple copies of DA applications, it may give one of the copies to the purchaser. Otherwise, it may make a copy for the purchaser if the copyright owner has given permission. In other cases, the purchaser may be entitled to make his or her own copy, as outlined in questions 7 and 8 above.

## 10. Will councils infringe copyright by dealing with plans and other documents protected by copyright during the DA planning and assessment phase?

No. Councils have an indemnity under clause 57 of the *Environmental Planning and Assessment Regulation 2000* (NSW) whereby a DA applicant (not being the copyright owner) is taken to have indemnified all persons using the development application and documents in accordance with the *Environmental Planning and Assessment Act 1979* (NSW) (the EPA Act) against any claim or action in respect of breach of copyright.

Therefore, councils may copy and distribute any DA information in accordance with the EPA Act and not be liable for an action for breach of copyright. This indemnity applies only during the planning and assessment phase, and enables councils to copy and distribute information as required by the EPA Act. It does not apply to disclosure of information under the GIPA Act.

For more information, the Australian Copyright Council publishes a series of information bulletins on their website at [www.copyright.org.au](http://www.copyright.org.au).

# Notice about the reproduction of works and the copying of published editions

## Warning

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. Certain dealings with copyright will not constitute an infringement, including:

- a reproduction that is a fair dealing under the *Copyright Act 1968* (the **Act**), including a fair dealing for the purposes of research or study; or
- a reproduction that is authorised by the copyright owner.

It is a fair dealing to make a reproduction for research or study, of one or more articles in a periodical publication for the same research or same course of study or, for any other work, of a reasonable portion of a work.

For a published work in hardcopy form that is not less than 10 pages and is not an artistic work, 10% of the number of pages, or one chapter, is a reasonable portion.

For a published work in electronic form only, a reasonable portion is not more than, in the aggregate, 10% of the number of words in the work.

More extensive reproduction may constitute fair dealing. To determine whether it does, it is necessary to have regard to the criteria set out in subsection 40 (2) of the Act.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.