

**From:** "SPCG" <[soldierspointcommunity@bigpond.com](mailto:soldierspointcommunity@bigpond.com)>

**Date:** 12 February 2014 2:00:39 pm AEDT

**To:** <[peter.gesling@portstephens.nsw.gov.au](mailto:peter.gesling@portstephens.nsw.gov.au)>

**Cc:** "SPCG" <[soldierspointcommunity@bigpond.com](mailto:soldierspointcommunity@bigpond.com)>

**Subject:** FW: Copyright and Public documents DA

Mr. Gesling,

I write to you on behalf of the Soldiers Point Community Group Inc.

In February 2012 Port Stephens Council released a development application relating to the expansion of the marina at Soldiers Point.

At that time the documents associated with that DA were made available only in hard copy at the Tomarree Library.

A request was made through you to have these documents released in electronic form, like other applications, on Council's web site so that the general public could access relevant information.

You refused that request citing copyright as a rationale. This organisation then took this issue up via the Environmental Defenders Office.

Once again your office indicated that the reason for not providing electronic access was due to Council's concern over copyright. This was blamed on the applicant, Hamptons Property Service P/L.

Through a GIPA request we subsequently obtained a copy of a letter from HPS to Council indicating that they did not have any issue with copyright and since then this saga has continued.

Finally by applying the full force of our legal advisors we managed to get Council to accept they were wrong and to start releasing the documents relating to the marina DA.

This included all public correspondence between Council staff and the owner, proponent and applicant of this proposal.

We have just received notification from Council that, finally after two years, we can expect an electronic copy of all documentation to be delivered to our Secretariat in the near future.

Mr. Gesling, you are the General Manager of Port Stephens Council. You, Sir, could have taken action, at any time in the last two years to make the result of this freedom of information request freely available, instead of hiding behind your interpretation of the Copyright Act.

I have personally dealt with many Councils, not one interprets the Act in the way you do. I ask you to remove your selective interpretations of the Act and release all documentation for major DAs now and in the future.

You may find this extract from the EPA Act worth review:

## **Environmental Planning and Assessment Act 1979 No 203**

### **Section 158A Copyright in documents used for purposes of this Act—indemnification**

- (1) A relevant person who is not entitled to copyright in a document that is part of a planning matter is taken to have indemnified all persons using the document for the purposes of this Act against any claim or action in respect of a breach of copyright in the document.
- (2) For the purposes of this section:

- (a) a development application or an application for a complying development certificate (or an application to modify a development consent) is a planning matter, and the applicant is the relevant person, and
  - (b) an application for approval to carry out State significant infrastructure (or an application to modify an approval of State significant infrastructure) is a planning matter, and the applicant is the relevant person, and
  - (c) a Part 3A project or concept plan application within the meaning of Schedule 6A (or a request to modify an approval or concept plan under Part 3A), and any environmental assessment or report under Part 3A, is a planning matter, and the applicant is the relevant person, and
  - (d) an environmental impact statement under Part 5 or 5.1 (including any preferred infrastructure report under Part 5.1) is a planning matter, and the proponent under Part 5 or 5.1 is the relevant person, and
  - (e) a planning proposal under Part 3 is a planning matter, and the person preparing the proposal is the relevant person, and
  - (f) a planning agreement referred to in section 93F is a planning matter, and the developer under the agreement is the relevant person, and
  - (g) a matter or thing under this Act that is declared by the regulations for the purposes of this section is a planning matter, and the person declared by the regulations is the relevant person in respect of that matter or thing.
- (3) For the purposes of this section, a document is part of a planning matter if it forms part of or accompanies the planning matter, or is subsequently submitted by the relevant person in support of the planning matter or is exhibited or made public in accordance with a requirement made by or under this Act in relation to the planning matter.
- (4) The regulations may limit the operation of this section.
- (5) This section extends to a planning matter that was made or submitted before the commencement of this section.

It is our contention that you have no grounds for not releasing documentation as requested in electronic format. The purpose of this email is to ask you for advise your planning staff to release documentation for all major DAs in electronic format and publish those documents on Councils web site.

I will await your response before escalating this matter further.

Thank You  
Colin Howard  
President  
Soldiers Point Community Group Inc.