



South Gippsland Shire Council

## INTELLECTUAL PROPERTY POLICY

Policy Number C23  
 Council Meeting Date 25 November 2020  
 Next Review Date November 2024

COUNCIL POLICY

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### 1. POLICY OBJECTIVE

The *Intellectual Property Policy C23* (the Policy) aims to:

- Recognise the value of and protect Council's Intellectual Property;
- Acknowledge that Council owns, controls and manages all Intellectual Property (IP) that it has created or acquired;
- Recognise that all Councillors, staff, contractors and consultants have a responsibility to properly identify, attribute and preserve Council's IP; and
- Ensure that Council's IP is managed professionally, protected, shared and commercialised where appropriate.

### 2. POLICY SCOPE

This policy applies to:

- All activities of Council and related activities; and
- All Councillors, staff (whether permanent or temporary or provided by an agency), consultants, contractors or other appointees.

Council wishes to foster the development of Intellectual Property that is a valuable asset to the organisation. Intellectual Property may only be used in a manner that furthers Council's purposes. Council has the right to choose which ideas are to be developed. It is the responsibility of staff to protect Council's Intellectual Property and ensure that it is used in accordance with this policy.

### 3. POLICY PRINCIPLES – INTELLECTUAL PROPERTY

Council owns, controls and manages all IP created by Council staff.

Council staff who are also employed outside Council, cannot use Council IP as part of this external employment, unless permission has been granted in writing by the Chief Executive Officer (CEO). It is also noted that Council staff cannot be employed outside Council unless this is specifically approved by the CEO.

Where Council engages any contractor or consultant or their subcontractors, and the contractor or consultant or their subcontractors creates any IP (including copyright) as part of that engagement, then there must be a written agreement which clearly sets out that Council owns this IP. This also applies to individuals employed by Council through an agency.

Should an occasion occur where commercialisation of IP is considered, Council must seek appropriate legal, financial and commercial advice when making decisions in this regard.

#### 3.1 Staff Responsibilities

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To properly identify, preserve and use Council's IP, and respect the IP of others. Where there has been an alleged infringement or misuse of IP owned by Council by a third party, staff must notify their manager who will provide a written report to their Director and the CEO.

To ensure that copyright material is identified, captured and recorded on an appropriate system.

### **3.2 Council's Ownership and use of Intellectual Property**

It is Council policy that:

- Council is the owner of Council's IP including, without limitation, Council materials;
- Council's IP may be used only for Council's purposes (unless otherwise agreed by Council);
- Council's IP may not be reproduced in any form or communicated using any medium without Council's consent; and
- Council's IP may not be assigned to a third party without the prior written consent of the CEO.

### **3.3 Developed Intellectual Property**

It is Council policy that by participating in any of Council's project teams, technical committees and / or the creation and adoption of Council's IP, participants and committee members (whether they are Councillors, employees or third parties) must acknowledge that Council is the owner of all Developed Intellectual Property.

If necessary, individuals who participate in Council project teams, technical committees and related activities will be required to sign an agreement acknowledging the transfer of any rights in Council's IP to Council. The rights granted by this assignment shall belong to Council in perpetuity.

For clarity, it is Council's policy that unless otherwise agreed by Council, contractors, subcontractors engaged by Council for the purposes of providing Council with specified services must acknowledge and agree that the ownership of Developed IP created or developed in the course of or in connection with the provision of services by the contractor to Council will vest in Council. Further, the contractor may be requested to execute certain documents and do certain things required by Council for the purposes of giving effect to Council's ownership of such Developed IP rights.

### **3.4 Third Parties' Intellectual Property**

It is Council policy that the Intellectual Property of third parties must be respected and not infringed by Council or any of its committees, or any Councillor, employee, member or other person acting on behalf of Council.

### **3.5 Copyright and Council's Electronic Networks**

The Copyright Act 1968 (Cth) (the Act) protects the rights of owners of certain work (literary, dramatic, musical and artistic work). Specifically, the Act preserves the owner's exclusive rights to, depending on the type of work, reproduce the work in a material form, publish the work, perform the work in public, make available online or electronically transmit the work to the public, make an adaptation of the work and / or enter into a commercial rental arrangement in respect of the work.



In relation to Council's electronic systems it is therefore Council policy that inputting, uploading, downloading, reproducing, transmitting, or in any way making available online Council's IP without Council's prior written permission is prohibited, with the exception that Council is not intending to limit the applicability of the 'fair dealing' concept established in the Act (the relevant sections aim to allow some 'exceptions', within the bounds of what is 'fair' - refer to the Act for more detail).

To assist Councillors and staff using Council's electronic networks and computer systems to be aware of their obligations in relation to IP, the following message is displayed upon PC start up.

*'Only individuals currently authorised to log in on Council's network may use this computer. All information accessed on or generated by this computer is the property of South Gippsland Shire Council and is subject to the protection accorded to Intellectual Property (by law and Council Policy).'*

#### 4. RISK ASSESSMENT

Through the effective implementation of this Policy, Council will manage the risk of loss through the unapproved use of Council's IP or breaching the IP rights of a third party.

#### 5. ROLES AND RESPONSIBILITIES STATEMENT

Council will implement this policy by:

- Publishing the policy on the Council website;
- Managing IP in accordance with this Policy and Council's Corporate Information Management Policy;
- Ensuring all employment contracts for staff (including agency staff) and contracts with contractors, sub-contractors and consultants contain an appropriate clause relating to ownership and use of Council's IP.
- Reporting to Council's Audit Committee and Council any issues arising about Council's IP.

| <i>SUPPORTING INFORMATION</i>       |  |
|-------------------------------------|--|
| <i>Legislative Provisions</i>       | <i>Copyright act (1968) (Cth)<br/>Patents Act 1990<br/>Trademarks Act 1995<br/>Designs Act 2003<br/>Circuit Layout Act 1989</i>  |
| <i>Council Supporting Documents</i> | <i>N/A</i>   |
| <i>Related Documents</i>            | <i>N/A</i>   |
| <i>File Number</i>                  | <i>TRIM Ref: D9304520</i>  |
| <i>DEFINITIONS</i>                  |  |
| <i>Intellectual Property:</i>       | <i>Means all rights conferred under statute, common law and equity in relation to inventions, designs, names, registered and unregistered trade marks (including service marks), trade and trade secrets, logos and get up, circuit layouts, confidential information, copyright and any other intellectual or proprietary rights as defined in Article 2 of the World Intellectual Property Organisation Convention of July 1967. Intellectual property is what our minds create that is then put into material form (i.e. written down, drawn, photographed, composed, broadcast, performed, designed, invented). IP rights are protected in a variety of ways, some of which are automatic upon creation, e.g. copyright, and some are registrable, e.g. registered trademarks and patents.</i> |



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| <b>Developed Intellectual Property</b> |                 | <i>Means all Intellectual Property created or developed during the course of or in connection with any project undertaken by Council, including without limitation, projects undertaken by Council together with a third party.</i>  |                          |
| <b>Council Materials</b>               |                 | <i>Means all material brought or required to be brought into existence by or for Council including but not limited to documents, logos, branding material, printed material, electronic products, databases, audio / visual products, equipment, data stored by any means and any other material or information prepared by Council or otherwise held by or for Council.</i> |                          |
| <b>REVISION HISTORY</b>                |                 |  |                          |
| <b>Policy Review</b>                   |                 | <i>In accordance with Council's policy review process, this policy will be reviewed and adopted on a 4-year cycle unless required earlier for legislation or other reasons.</i>  |                          |
| <b>Version</b>                         | <b>Approved</b> | <b>Approval Date</b>   | <b>Sections Modified</b> |
| 1.0                                    | Council Meeting | 2020   | New Policy               |