

SPEAR Common Rules

1. ACCESS

Customers may seek access to SPEAR 24 hours a day for every day of the year. However, the Department does not warrant or represent that access to SPEAR will always be available at all times on all days.

2. AVAILABILITY AND SECURITY

2.1 Security of Communications

Subject to any statutory and any express warranties provided in any other terms, the Department does not warrant the security of any information transmitted to or from the Department or any other person using SPEAR and such transmission is at the Customer's risk.

2.2 Interruptions

As electronic services are subject to interruption or breakdown for a variety of reasons, access to SPEAR is offered on an 'as is, as available' basis only.

2.3 Suspension

The Department may alter, suspend or withdraw the availability of SPEAR at any time for any reasonable cause, with or without notice to Customers or Users.

2.4 Delays in processing

The Department and the Relevant Council have no responsibility for, and accepts no liability for, any Loss which results from, delays in processing any Communication by SPEAR.

2.5 Security and risk of transmission

Subject to all reasonable endeavours to maintain security both physical and logical by the Department, Customers acknowledge that the Department has no responsibility for security of transmissions over any communications channels, including the internet, and such transmissions are at the Customers' risk. Customers are responsible for security of their own systems. Customers must do all that is reasonably within their power or control to maintain the security of SPEAR.

2.6 Backup

The Department will regularly, and in accordance with the Department's own internal processes, back-up the data and information stored in SPEAR.

2.7 Disaster Recovery

The Department will develop and implement a reasonable disaster recovery strategy. The key aim of the disaster recovery strategy is the protection and recovery of the data and information stored in SPEAR.

3. FUNCTIONALITY

3.1 Functionality provided by SPEAR

SPEAR will have such functionality and features as the Department determines to provide from time to time having regard to what is reasonably required to enable Customers to lodge, receive and process (as appropriate) Relevant Applications.

3.2 Statutory Provisions

The Department will use its reasonable endeavours to ensure that SPEAR operates in accordance with the Statutory Provisions applicable to SPEAR. However, the Department provides no warranties with respect to the compliance of SPEAR with any Statutory Provision.

3.3 SPEAR updates

The Department may, from time to time, provide updates or new releases of SPEAR. Nothing in these Common Rules shall be construed so as to prevent or limit the type, nature or impact of any updates or new releases which may be provided by the Department.

4. HOW INFORMATION IS PROVIDED BY SPEAR

All Customers agree that where any document or information is to be provided to or by SPEAR:

- (1) such document or information will be provided by way of an electronic message to the relevant Customers, giving notice of the document or information having been received into or made available in SPEAR, and providing the Customer with the URL to access the document or information; and
- (2) they accept the electronic notification of the availability of the document or information as provision of the relevant document or information to them by SPEAR.

5. SPEAR RECORDS

5.1 Audit logs

The Department will maintain logs of transactions communicated using SPEAR.

5.2 Lodging times agreed

Subject to any legislative requirement to the contrary, all Customers agree that the time recorded as the time of entry of a document or information into the SPEAR system, as identified in the transaction log maintained by the Department as part of SPEAR, is the time of lodgement of the record or information for the purposes of the processing of the Relevant Application.

5.3 Communication

All Customers warrant upon each and every Communication that the Communication is true and correct and contains all relevant information.

5.4 Conclusive Proof

All Customers agree that the records maintained by the Department are and will be conclusive evidence, without any further proof, of all actions and transactions communicated through SPEAR and of all information contained in such actions or transactions.

6. OBLIGATIONS UNDER LEGISLATION

All Customers agree that nothing in the Common Rules or any SPEAR agreement is to be construed as changing the duties or functions of any party under the *Planning and Environment Act 1987* or the *Subdivision Act 1988* or any other Statutory Provision.

7. COUNCIL RECORDS TO BE RELIED UPON

Customers must not rely upon SPEAR for current information as there may be delays in the loading of information. Customers must rely upon the records held by the Relevant Council in relation to any Relevant Application.

8. CUSTOMER'S OBLIGATION TO UP-DATE DATA

All Customers agree that:

- (a) where any document or information within SPEAR is required to be amended such amended information or

document must be changed within SPEAR as soon as reasonable practicable and consistent with all statutory requirements; and

- (b) the official version and status of each Relevant Application is held and maintained by the Relevant Council and the documents and information in SPEAR will only be up to date as lodged or amended by Customers in SPEAR.

9. ELECTRONIC TRANSACTIONS ACT

All Customers agree that any communication necessary or appropriate for the processing of Relevant Applications may be undertaken by an electronic communication (as defined in the *Electronic Transactions Act (Victoria) 2000* and they each:

- (a) consent to the giving of information by electronic communication as provided for under Section 8 of the *Electronic Transactions Act*; and
- (b) agree and acknowledge that where any signature is required to an electronic communication and the applicable security requirements have been met, the signature is valid as provided for in Section 9 of the *Electronic Transactions Act*; and
- (c) agree and acknowledge that where a document is produced by electronic communication, it is valid as provided for in Section 10 of the *Electronic Transactions Act*; and
- (d) agree and acknowledge that the information recorded in SPEAR is validly retained as provided for in Section 11 of the *Electronic Transactions Act*.

10. NO LIABILITY

- 10.1 The Department and the Relevant Council make no representation or warranty as to the accuracy or completeness of the information contained in or which may be obtained by the use of SPEAR. The Customer and any person using or relying upon SPEAR or information obtained through SPEAR does so on the basis that the Department and the Relevant Council accept no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information, including the absence of or loss of any data.
- 10.2 For the purposes of these Common Rules, Relevant Council means the Council which is the Responsible Authority with respect to the Relevant Application.

11. LIABILITY EXCLUDED FOR USE OF SPEAR

The liability of the Department and the Relevant Council for:

- (1) any failures or delays in availability or functioning of SPEAR due to failure of any communication network (including any internet service provider) or hardware or software used by the Department;
- (2) any breakdown or interruption to any computer system; or
- (3) any error, corruption or loss of data which may be caused directly or indirectly through the use of SPEAR,

is limited to the maximum extent permitted by law.

12. LICENCE FOR THE DEPARTMENT TO USE INFORMATION

12.1 All Customers grant to the Department an irrevocable, perpetual, royalty free licence (including the right to sub-licence) to use, copy, provide and publicly display:

- (1) all documents lodged with SPEAR for the purpose of the operation of SPEAR or for any other purpose relating to Relevant Applications; and
- (2) all information and data provided to SPEAR, including survey data, plans and field notes and Personal Information,

for the purposes of the operation of SPEAR and for all Authorised Purposes.

13. PERSONAL INFORMATION

Where the Relevant Applicant supplies information or documents to SPEAR and these include Personal Information such information must only be supplied with the consent of the person to whom the information relates and the Relevant Applicant (or other person supplying the information) warrants that such consent has been obtained.

14. SPEAR INTELLECTUAL PROPERTY

All Customers agree that where SPEAR creates documents or compiles information (whether in electronic or any other form) by drawing information from Relevant Applications or other information provided to the SPEAR system, the Intellectual Property Rights in that document or compilation of the information is owned by the Department.

15. STATEMENTS OF COMPLIANCE

All Customers acknowledge and agree that statements of compliance under section 21 of the *Subdivision Act* 1988 for SPEAR Applications will issue by the Relevant Council to the Applicant and will not be lodged with the Registrar of Titles through SPEAR unless lodging is initiated by the Applicant.

16. OBJECTIONS

- 16.1 Objections to Relevant Applications may be made available on SPEAR by the Relevant Council but, under s. 57(5) of the *Planning and Environment Act*, Customers must rely upon the records of the Relevant Council for details of any objections and the SPEAR record must not be relied on for this purpose.
- 16.2 The User warrants to the Department and to any relevant Responsible Authority each and every time that the User lodges an Objection in SPEAR that the User is authorised by the persons named in the Objection to make and lodge the Objection.

17. DATA USE

Customers may use the documents and all information in SPEAR for Relevant Purposes but not for any other purpose. Customers acknowledge and agree that the documents and all information which they provide to SPEAR may be used for the Authorised Purposes by the Department and the Relevant Council.

18. Definitions

- 18.1 In these Common Rules the following definitions apply:

Department means the Department of Sustainability and Environment of the State and any reference to the Department shall be read and construed as a reference to the State.

Authorised Purpose means the recording and the processing of Relevant Applications and for all documentation and associated purposes (including recording for public access) and includes use in records of Responsible Authorities or Referral Authorities, the Land Registry, Crown land records and the digital map base as used and distributed by or on behalf of the State.

Common Rules means these terms and conditions as set out on the SPEAR web site from time to time which bind Customers of SPEAR.

Communication includes any instruction, request, approval, certification, acceptance, confirmation, information, or document.

Council means a Council as defined in the Local Government Act 1989.

Customer means any person or body who enters into an agreement with the Department for access to and use of SPEAR and specifically includes the Surveyor and the Relevant Council.

Intellectual Property Rights means any patents, trade marks or service marks, rights in designs, trade or business names, copyrights, domain names and data base rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature having equivalent or similar effect to any of these in any part of the world.

Loss means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person and includes:

- (1) the cost of any action taken by any person to protect itself from any loss or to preserve any right it has under this Deed;
- (2) any taxes or duties payable by the person in connection with this Deed (excluding any tax on assessable income); and
- (3) where applicable, all costs actually paid by the person to their own legal representative (whether or not under a costs agreement) and other expenses incurred by the person in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal).

Objection means a document to object to an application for a planning permit under section 56 or to object to the grant of a permit under section 57 of the *Planning and Environment Act 1987* (Vic).

Personal Information has the same meaning as that provided in Section 3 of the *Information Privacy Act 2000* (Vic).

Relevant Applicant means the person making the Relevant Application lodged in SPEAR.

Relevant Application means an application to a Responsible Authority or other authorised body and relating to:

- (1) subdivision or consolidation of any land under the *Subdivision Act 1988* (Vic);
- (2) approval of the development and use of any land under the *Planning and Environment Act 1987* (Vic);
- (3) the issue of permits under the *Building Act 1993* (Vic);

and includes all activities and documentation associated with such applications.

Relevant Purpose means the purpose of making a Relevant Application, or updating, viewing or objecting to a Relevant Application and includes use for all associated activities and documentation.

Relevant Council means the Council (or other statutory appointee or body) which is the Responsible Authority with respect to the Relevant Application.

Responsible Authority has the same meaning as it does in the Planning and Environment Act 1987 (Vic).

SPEAR means the computerised system for providing Streamlined Planning through Electronic Applications and Referrals developed by the Department as Modified from time to time.

State means the Crown in right of the State of Victoria.

Statutory Provision means a statute, regulation or provision of a statute or regulation.

User means any person authorised to access and use SPEAR.