

**MUSWELLBROOK SHIRE COUNCIL**  
**PRIVACY MANAGEMENT PLAN**

Adopted by Council  
12<sup>th</sup> October, 2009

## **This note does not form part of the Privacy management Plan**

Council's first Privacy Management Plan was based on the generic plan prepared by Privacy NSW and endorsed by the Department of Local Government.

The Plan was adopted by the General Manager Mr. L. P. Fisher on 1st July, 2000 under delegated authority. The Plan was formally adopted by Council on 10th July, 2000 Minute No 830.

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# 1. Introduction

The Privacy and Personal Information Protection Act 1998 (“PPIPA”) provides for the protection of personal information and for the protection of the privacy of individuals.

Section 33 of the PPIPA requires all councils to prepare a Privacy Management Plan (the “Plan”) to deal with:

- ◆ the devising of policies and practices to ensure compliance by the Council with the requirements of the PPIPA,
- ◆ the dissemination of those policies and practices to persons within the Council,
- ◆ the procedures that the Council proposes for Internal review of privacy complaints;
- ◆ such other matters as are considered relevant by the Council in relation to privacy and the protection of personal information held by it.

This Plan has been prepared for the purpose of section 33 of the PPIPA.

The Act provides for the protection of personal information by means of 12 Information Protection Principles. Those principles are listed below:

- Principle 1 - Collection of personal information for lawful purposes
- Principle 2 - Collection of personal information directly from the individual
- Principle 3 - Requirements when collecting personal information
- Principle 4 - Other requirements relating to collection of personal information
- Principle 5 - Retention and security of personal information
- Principle 6 - Information about personal information held by agencies
- Principle 7 - Access to personal information held by agencies
- Principle 8 - Alteration of personal information
- Principle 9 - Agency must check accuracy of personal information before use
- Principle 10 - Limits on use of personal information
- Principle 11 - Limits on disclosure of personal information
- Principle 12 - Special restrictions on disclosure of personal information

Those principles are *modified* by the Privacy Code of Practice for Local Government (“the Code”) made by the Attorney General.

The Code has been developed to enable Local Government to fulfil its statutory duties and functions under the Local Government Act 1993 (the “LGA”) in a manner that seeks to comply with the PPIPA.

This Plan outlines how the Council will incorporate the 12 Information Protection Principles into its everyday functions.

This Plan should be read in conjunction with the Code of Practice for Local Government.

Nothing in this Plan is to affect:

- ◆ any matter of interpretation of the Code or the Information Protection Principles as they apply to the Council;
- ◆ any obligation at law cast upon the Council by way of representation or holding out in any manner whatsoever;
- ◆ create, extend or lessen any obligation at law which the Council may have.

This Plan is designed to introduce policies and procedures to maximise compliance with the PPIPA.

Where the Council has the benefit of an exemption, it will nevertheless describe procedures for compliance in this Plan. By doing so, it is not to be bound in a manner other than that prescribed by the Code.

Council collects, stores and uses a broad range of information. A significant part of that information is personal information. This Plan applies to that part of the Council's information that is personal information.

It may mean in practice that any information that is not personal information will receive treatment of a higher standard; namely treatment accorded to personal information where the information cannot be meaningfully or practicably separated.

#### What is personal information?

“Personal information” is defined in section 4 of the PPIPA as follows:

Personal information is defined to mean information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This information can be on a database and does not necessarily have to be recorded in a material form.

#### What is not “personal information”.

“Personal information” does not “include information about an individual that is contained in a publicly available publication”. Personal information, once it is contained in a publicly available publication, ceases to be covered by the PPIPA.

Where the Council is requested to provide access or make a disclosure and that information has already been published, then the Council will rely on the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA (for example, section 12(1) of the LGA).

Council considers the following to be publicly available publications:

- ◆ An advertisement containing personal information in a local, city or national newspaper.
- ◆ Personal information on the Internet.

- ◆ Books or magazines that are printed and distributed broadly to the general public.
- ◆ Council Business papers or that part that is available to the general public.
- ◆ Personal information that may be a part of a public display on view to the general public.

Information published in this way ceases to be covered by the PPIPA.

However, Council's decision to publish in this way must be in accordance with PPIPA.

### Policy on Electoral Rolls

The Electoral Roll is a publicly available publication. Council will provide open access to the Electoral Roll in Council's library. Council will refer any requests for copies of the Electoral Roll to the State Electoral Commissioner.

### Application of this Plan

The PPIPA and this Plan apply, wherever practicable, to:

- ◆ Councillors;
- ◆ Council employees;
- ◆ Consultants and contractors of the Council;
- ◆ Council owned businesses; and
- ◆ Council committees (including those which may be established under section 355 of the LGA).

Council will ensure that all such parties are made aware that they must comply with PPIPA, the Code of Practice for Local Government, any other applicable Privacy Code of Practice and this Plan.

### Personal Information Held by Council

The Council holds personal information concerning Councillors, such as:

- ◆ personal contact information;
- ◆ complaints and disciplinary matters;
- ◆ pecuniary interest returns; and
- ◆ entitlements to fees, expenses and facilities;

The Council holds personal information concerning its customers, ratepayers and residents, such as:

- rates records; and
- DA applications and objections.

The Council holds personal information concerning its employees, such as:

- ◆ recruitment material;
- ◆ leave and payroll data;
- ◆ personal contact information;
- ◆ performance management plans;
- ◆ disciplinary matters;
- ◆ pecuniary interest returns; and
- ◆ wage and salary entitlements.

### Applications for suppression in relation to general information (not public registers).

Where an application for suppression is made in relation to anything other than a public register, then an application under section 739 of the Local Government Act 1993 (“LGA”) is required.

Section 739 of the LGA covers all publicly available material under section 12(1) and 12(6) of the LGA other than public registers. As such, it limits disclosure in those circumstances where an application for suppression is successful. An application for suppression must be verified by statutory declaration and otherwise meet the requirements of section 739. When in doubt, Council will err in favour of suppression.

For more information regarding disclosure of information (other than public registers) see the discussion of IPPs 11 and 12 in Part 3 of this Plan.

For information regarding suppression of information on *public registers*, see Part 2 of this Plan.

### Caution as to Unsolicited Information

Where an individual, a group or committee, not established by Council, gives Council unsolicited personal information, then that information should be still treated in accordance with this Plan, the Code and the PPIPA for the purposes of IPPs 5-12 which relate to storage, access, use and disclosure of information.

## Part 2 Public Registers

A public register is defined in section 3 of the PPIPA:

*public register means a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).*

A distinction needs to be drawn between “public registers” within the meaning of Part 6 of the PPIPA and “non public registers”. A “non public register” is a register but it is not a “public register” for the purposes of the PPIPA. For example, the register might not be publicly available or it may not contain personal information.

Disclosure in relation to public registers must comply with Part 6 of the PPIPA and the Code. Personal information cannot be accessed by a person about another person unless the personal information is contained in a public register. Where personal information is contained in a public register, then Part 6 of the PPIPA applies to determine whether access to that information will be given to another person.

Disclosure in relation to all other personal information must comply with the Information Protection Principles as outlined in Part 2 of this Plan and the Code where it includes personal information that is not published.

The Council holds the following public registers under the LGA: \*\*\*

- ◆ Section 53 - Land Register
- ◆ Section 113 - Records of Approvals
- ◆ Section 449 -450A - Register of Pecuniary Interests
- ◆ Section 602 - Rates Record

\*\*\*Note – this is purely indicative. Council may, by virtue of its own practice, hold other Public Registers, to which PPIPA applies.

Council holds the following public registers under the Environmental Planning and Assessment Act:

- ◆ Section 100 – Register of consents and approvals
- ◆ Section 149G – Record of building certificates

Council holds the following public register under the Protection of the Environment (Operations) Act:

- ◆ Section 308 – Public register of licences held

Council holds the following public register under the Impounding Act 1993:

- ◆ Section 30 & 31 – Record of impounding

Members of the public may enquire only in accordance with the primary purpose of any of these registers. The primary purpose for each of these public registers is set out in the sections that follow.

## **Public Registers and the PPIPA**

A public register generally confers specific rights or privileges, a benefit, or status, which would not otherwise exist. It may be required by law to be made publicly available or open to public inspection, or it is simply made publicly available or open to public inspection (whether or not payment is required).

Section 57 of the PPIPA requires very stringent controls over the disclosure of personal information contained in a public register. Section 57 provides broadly that where Council is responsible for keeping a public register, it will not disclose any personal information kept in that register unless it is satisfied that the information is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.

Section 57 (2) requires Council to comply to ensure that any person who applies to inspect personal information contained in the public register to give particulars in the form of a statutory declaration as to the proposed use of that information. (Form at Appendix 1 may be used a guide)

If the stated purpose of the applicant does not conform with the purpose for which the public register is kept, access to the information sought will not be given.

Where personal information is contained in a publicly available publication, that information will not be regarded as personal information covered by the PPIPA.

## **Effect on Section 12 of the LGA**

Section 57 of the PPIPA prevails over section 12 of the LGA to the extent of any inconsistency. Therefore:

1. If a register is listed in section 12(1) of the LGA, access must not be given except in accordance with section 57(1) of the PPIPA.
2. If a register is not listed in section 12(1) of the LGA, access must not be given except:
  - (i) if it is allowed under section 57(1) of the PPIPA; **and**
  - (ii) inspection would not be contrary to the public interest as per section 12(6) of the LGA.

*Note:* Both 1 and 2 are amended with regard to specific public registers in the Privacy Code of Practice for Local Government.

## **Where some information in the public register has been published**

That part of a public register that is not published in a publicly available publication will be treated as a “public register” and the following procedure for disclosure will apply.

For example, the Register of Consents and Approvals held by Council under section 100 of the Environmental Planning and Assessment Act requires Council to advertise or publish applications for development consent.

When Council publishes the address of the property, it may identify the owner. The personal information that has not been published and any applications not advertised or

that have been rejected or withdrawn (and hence also not published) will be treated as a public register under PPIPA.

Council may hold a register under the Contaminated Land Management Act on behalf of the Environment Protection Authority. This is not to be considered a public register of the Council as the statute does not place any obligations on the Council to make this register publicly available as a register of contaminated land. Furthermore, the legislation foreshadows that the Environment Protection Authority may indeed post this list or register on the internet. This may constitute a publication of the information and therefore the PPIPA will not apply.

Registers should not be published on the internet.

## **Disclosure of personal information contained in the public registers**

A person seeking a disclosure concerning someone else's personal information from a public register must satisfy Council that the intended use of the information is for a purpose relating to the purpose of the register or the Act under which the register is kept.

In the following section, by way of guidance only, what might be called the "primary" purpose (or "the purpose of the register") has been specified for each identified register. In some cases a "secondary purpose" has also been specified, by way of guidance as to what might constitute "a purpose *relating to* the purpose of the register".

## **Purposes of Public Registers**

### **Purposes of public registers under the Local Government Act**

Section 53 - Land Register – The primary purpose is to identify all land vested in Council, or under its control. The secondary purpose includes a consideration of public accountability as to the land held by Council. Third party access is therefore a secondary purpose.

Section 113 - Records of Approvals – The primary purpose is to identify all approvals granted under the LGA.

Section 450A - Register of Pecuniary Interests – The primary purpose of this register is to determine whether or not a Councillor or a member of a council committee has a pecuniary interest in any matter with which the council is likely to be concerned. There is a corresponding public accountability purpose and third party access is a secondary purpose.

Section 602 - Rates Record - The primary purpose is to record the value of a parcel of land and record rate liability in respect of that land. The secondary purpose includes recording the owner or lessee of each parcel of land. For example, that a disclosure on a section 603 (of the LGA) rating certificate that a previous owner was a pensioner is considered to be allowed, because the secondary purpose is "a purpose relating to the purpose of the register".

## **Purposes of public registers under the Environmental Planning and Assessment Act**

Section 100 – Register of consents and approvals – The primary purpose is to identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates.

Section 149G – Record of building certificates – The primary purpose is to identify all building certificates.

## **Purposes of public registers under the Protection of the Environment (Operations) Act**

Section 308 – Public register of licences held – The primary purpose is to identify all licences granted under the Act.

## **Purposes of the public register under the Impounding Act**

Section 30 & 31 – Record of impounding – The primary purpose is to identify any impounding action by Council.

## **Secondary purpose of all Public Registers**

Due to the general emphasis (to be found in the LGA and elsewhere) on local government processes and information being open and accountable, it is considered that a secondary purpose for which all public registers are held by Council includes the provision of access to members of the public. Therefore disclosure of specific records from public registers would normally be considered to be allowable under section 57 of the PPIPA.

However, requests for access, copying or the sale of the whole or a substantial part of a Public Register held by Council will not necessarily fit within this purpose. Council should be guided by the Privacy Code of Practice for Local Government in this respect. Where Council officers have doubt as to the intended use of the information, an applicant may be requested to provide a statutory declaration so that Council may satisfy itself as to the intended use of the information.

Council will make its assessment as to the **minimum** amount of personal information that is required to be disclosed with regard to any request.

## **Other Purposes**

Persons or organisations who apply to Council to have access to the information contained in any public register for a purpose not related to the purpose of the register, may be given access at the discretion of Council but only in accordance with the Privacy Code of Practice for Local Government concerning Public Registers.

## **Applications for access to own records on a public register**

A person wishing to have access to a public register to confirm their own details needs only to prove their identity to Council before having access to their own personal information.

## **Applications for suppression in relation to a public register**

An application for suppression in relation to a public register will be dealt with under PPIPA, rather than section 739 of the LGA.

A person about whom personal information is contained (or proposed to be contained) in a public register, may request Council under section 58 of the PPIPA to have the information removed from, or not placed on the register.

If Council is satisfied that the safety or well-being of any person would be affected by not suppressing the personal information as requested, Council will suppress the information in accordance with the request unless Council is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information, in accordance with section 58(2) of the PPIPA. (“Well-being” is defined in the Macquarie Dictionary as “the good or satisfactory condition of existence; welfare”.)

When in doubt, Council will err in favour of suppression.

Any information that is removed from, or not placed on, that aspect of a public register to be made public may be kept on the register for other purposes. That is, the information may still be used for council functions, but it cannot be disclosed to other parties.

An application for suppression should be made in writing addressed to the General Manager and must outline the reasons for the request. The Council may require supporting documentation where appropriate.

## **Other registers**

Council may have other registers that are not public registers. The Information Protection Principles, this Plan, any applicable Code and the Act apply to those registers or databases.

# Part 3 – The Information Protection Principles

## Information Protection Principle 1 – Section 8

### **Section 8 Collection of personal information for lawful purposes**

- (1) A public sector agency must not collect personal information unless:
  - (a) the information is collected for a lawful purpose that is directly related to a function or activity of the agency, and
  - (b) the collection of the information is reasonably necessary for that purpose.
- (2) A public sector agency must not collect personal information by any unlawful means.

## The Privacy Code of Practice for Local Government

The Code makes no provision to depart from the requirements of this principle.

## Council Policy

Council will only collect personal information for a lawful purpose as part of its proper functions. The LGA governs Council's major obligations and functions.

Section 22 of the LGA provides other functions under other Acts. Some of those Acts are as follows:

- ◆ Community Land Development Act 1989;
- ◆ Companion Animals Act 1998:\*\*
- ◆ Conveyancing Act 1919;
- ◆ Environmental Planning and Assessment Act 1979;
- ◆ Fire Brigades Act 1989;
- ◆ Fluoridation of Public Water Supplies Act 1957;
- ◆ Food Act 2003;
- ◆ Impounding Act 1993;
- ◆ Library Act 1939;
- ◆ Protection of the Environment Operations Act 1997;
- ◆ Public Health Act 1991;
- ◆ Recreation Vehicles Act 1983;
- ◆ Roads Act 1993;
- ◆ Rural Fires Act 1997;
- ◆ State Emergency Service Act 1989.
- ◆ Strata Schemes (Freehold Development ) Act 1973;
- ◆ Strata Schemes (Leasehold Development ) Act 1986; and
- ◆ Swimming Pools Act 1992;
- ◆ Public Health Act 1991.

This list is not exhaustive.

Additionally, the exercise by Council of its functions under the LGA may also be modified by the provisions of other Acts. Some of those Acts follow:

- ◆ Coastal Protection Act 1979;
- ◆ Environmental Offences and Penalties Act 1989;

- ◆ Freedom of Information Act 1989;
- ◆ Heritage Act 1977;
- ◆ State Emergency and Rescue Management Act 1989;
- ◆ Unclaimed Money Act 1995;
- ◆ Unhealthy Building Land Act 1990.

The circumstances under which Council may collect information, including personal information, are varied and numerous.

Council will not collect any more personal information than is reasonably necessary for it to fulfil its proper functions.

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information must agree to be bound not to collect personal information by any unlawful means. This will include debt recovery actions by or undertaken on behalf of Council by commercial agents.

#### \*\*Companion Animals Act

Collection of information under the Companion Animals Act and Council's use of the Companion Animals Register should be guided by the Director General's guidelines, which have been developed with the PPIPA in mind.

#### Role of the Privacy Contact Officer

In order to ensure compliance with Information Protection Principle 1, internet contact forms, rates notices, application forms of whatsoever nature, or written requests by which personal information is collected by Council; will be referred to the Privacy Contact Officer prior to adoption or use.

The Privacy Contact Officer will also provide advice as to:

1. Whether the personal information is collected for a lawful purpose;
2. If that lawful purpose is directly related to a function of Council; and
3. Whether or not the collection of that personal information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's solicitor.

## Information Protection Principle 2 – Direct Collection

### **Section 9 Collection of personal information directly from individual**

A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:

- (a) the individual has authorised collection of the information from someone else, or
- (b) in the case of information relating to a person who is under the age of 16 years—the information has been provided by a parent or guardian of the person.

### The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

### Council Policy

The compilation or referral of registers and rolls are the major means by which the Council collects personal information. For example, the information the Council receives from the Land Titles Office would fit within section 9(a) above.

Other means include forms that customers may complete and lodge with Council for development consent, companion animal registration, applications for specific inspections or certifications or applications in respect of tree preservation orders.

In relation to petitions, the Council will treat the personal information contained in petitions in accordance with PPIPA.

Where Council or a Councillor requests or requires information from individuals or groups, that information will be treated in accordance with PPIPA.

Council regards all information concerning its customers as information protected by PPIPA. Council will therefore collect all personal information directly from its customers except as provided in section 9 or under other statutory exemptions or Codes of Practice. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

Where Council anticipates that it may otherwise need to collect personal information indirectly it will first obtain the authorisation of each individual under section 9 (a) of the PPIPA.

### External and related bodies

Each of the following will be required to comply with this Plan, any applicable Privacy Code of Practice, and the PPIPA:

- ◆ Council owned businesses;
- ◆ Council consultants;
- ◆ Private contractors;
- ◆ Council committees.

Council will seek to contractually bind each of these bodies or persons to comply with the PPIPA.

Where any of the above collect personal information on behalf of Council or in relation to the performance of their activities, that body or person will be required to:

- ◆ obtain a written authorisation and consent to that collection; and
- ◆ notify those persons in accordance with Information Protection Principle 3 as to the intended recipients and other matters required by that principle.

Council owned businesses, committees and private contractors or consultants must abide by this Plan, the Code and the PPIPA under the terms of their incorporation by Council or by contract.

### Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

Information Protection Principle 2 is modified by the Investigative Code of Practice to permit indirect collection where a direct collection is reasonably likely to detrimentally affect Council's conduct of any lawful investigation.

### Existing statutory exemptions under the Act

Compliance with Information Protection Principle 2 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in very obvious and limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(2) of the PPIPA permits non-compliance with Information Protection Principle 2 if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal.

Section 24(4) of the PPIPA permits non-compliance with Information Protection Principle 2 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 2 where the agency is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 2 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Section 26(1) of the PPIPA permits non-compliance with Information Protection Principle 2 if compliance would prejudice the interests of the individual concerned.

## **Further Explanation regarding IPP 2**

Where Council cannot collect personal information directly from the person, it will ensure one of the following:

1. Council has obtained authority from the person under section 9(a) of the PPIPA.
2. The collection of personal information from a third party is permitted under an Act or law. (For example, the indirect collection from the Land Titles Office.)
3. The collection of personal information from a parent or guardian is permitted provided the person is less than 16 years of age.
4. The collection of personal information indirectly where one of the above exemptions applies.
5. The collection of personal information indirectly is permitted under the Privacy Code of Practice for Local Government or the Investigative Code of Practice.

The only other exception to the above is in the case where Council is given unsolicited information.

## Information Protection Principle 3 - Requirements when collecting personal information

### **Section 10 – Requirements when collecting personal information**

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:

- (a) the fact that the information is being collected,
- (b) the purposes for which the information is being collected,
- (c) the intended recipients of the information,
- (d) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,
- (e) the existence of any right of access to, and correction of, the information,
- (f) the name and address of the agency that is collecting the information and the agency that is to hold the information.

### The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle where personal information is collected about an individual for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition without prior or subsequent notification.

### Council Policy

Where Council proposes to collect personal information directly from the person, it will inform that person that the personal information is being collected, what is done with that information and who the intended recipients will be.

Council will inform persons if the information is required by law or voluntarily given. Council will also inform individuals which department or section within Council holds their personal information, and of the right to access and correct that information. Council will adapt the general section 10 pre-collection Privacy Notification form as appropriate (See Appendix 3).

The following are examples of application procedures that will require a Privacy Notification Form in accordance with section 10:

- ◆ Lodging Development Applications;
- ◆ Lodging objections to Development Applications;
- ◆ Lodging applications for approval under the LGA;
- ◆ Any stamps or printed slips that contain the appropriate wording for notification under section 10 (see Appendix 3); and
- ◆ When collecting an impounded item.

In relation to the Privacy Notification Form that may be attached to a Development Application provided to objectors, it could be stated that objectors have a right to remain anonymous if they so choose. However, should they need to substantiate their objections, anonymous objections may given less weight (or no weight) in the overall consideration of the Application.

## Post - Collection

Where Council collects personal information indirectly from another public sector agency in respect of any one of its statutory functions, it will advise those individuals that it has collected their personal information by including a privacy notification form in the next issue of their rates notice, or otherwise by letter. A common example of the collection of information from another public sector agency is the Land Titles Office. Council receives information as to new ownership changes when property is transferred from one owner to the next. Appendix 2 contains a sample Privacy Notification Form that could be used for post-collection.

## External and related bodies

Each of the following will be required to comply with Information Protection Principle 3:

- ◆ Council owned businesses
- ◆ Council consultants
- ◆ Private contractors
- ◆ Council committees

Council will seek to contractually bind each of these bodies or persons to comply with the Information Protection Principle 3.

Where any of the above collect personal information on behalf of Council or in relation to the performance of their activities, that body or person will be required to notify those persons in accordance with Information Protection Principle 3 as to the intended recipients and other matters required by that principle.

## Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

Information Protection Principle 3 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

## Existing statutory exemptions under the Act

Compliance with Information Protection Principle 3 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(3) permits non-compliance with Information Protection Principle 3 where information is collected for law enforcement purposes. Law enforcement means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person.

Section 24(4) of the PPIPA permits non-compliance with Information Protection Principle 3 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by an investigative agency; and
- (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 3 where the agency is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 3 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Section 26 (1) of the PPIPA permits non-compliance with Information Protection Principle 3 if compliance would prejudice the interests of the individual concerned.

Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.

#### Research or access to a deposited record

A "deposited record" means records containing personal information that are deposited with Council for the purpose of preservation or making them available for research.

Documents that may have research value may be kept longer than is required by 12(a) of PPIPA.

It is anticipated that disclosure of personal information for research purposes will be allowed under section 41 of PPIPA by a Direction made by the Privacy Commissioner (if such a direction exists) until such time as a Research Code of Practice is made by the Attorney General.

## Information Protection Principle 4 - Other requirements relating to collection of personal information

### **Section 11 Other requirements relating to collection of personal information**

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

- (a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and
- (b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

### The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

### Council Policy

Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions.

Council collects personal information through the various forms that customers may complete and lodge with Council. Before adoption of a new form, a draft form will be reviewed for compliance with Information Protection Principle 4 by the EEO Officer, Council's solicitor, Public Officer or other suitable person. Should Council have any residual doubts, the opinion of Privacy NSW will be sought.

Council may use public place video surveillance in accordance with *NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television in Public Places*. The provisions of the Work Place Surveillance Act will be complied with.

## Information Protection Principle 5 - Retention and security of personal information

### **Section 12 Retention and security of personal information**

A public sector agency that holds personal information must ensure:

- (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and
- (c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
- (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

### The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

### Council Policy

Council may comply with this principle by using any or all of the following or similar documents:

- ◆ Records and Archives Services Manual;
- ◆ The Council's Policy on Security of and Access to Misconduct Files;
- ◆ Council's Internet Security Policy;
- ◆ Information Technology Security Policy; and
- ◆ General Records Disposal Schedule for Local Government.

### Research or access to a deposited record

Documents that may have research value may be kept longer than is required by 12(a) of PPIPA.

It is anticipated that the disclosure of personal information for research purposes will be allowed under section 41 of PPIPA by a Direction made by the Privacy Commissioner until such time as a Research Code of Practice is made by the Attorney-General.

## Information Protection Principle 6 - Information held by agencies

### **Section 13 - Information about personal information held by agencies**

A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the agency holds personal information, and
- (b) whether the agency holds personal information relating to that person, and
- (c) if the agency holds personal information relating to that person:
  - (i) the nature of that information, and
  - (ii) the main purposes for which the information is used, and
  - (iii) that person's entitlement to gain access to the information.

### The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

### Council Policy

Section 13 of the PPIPA requires a council to take reasonable steps to enable a person to determine whether the council holds personal information about them. If Council holds any information about a person, upon request it will advise them the nature of that information, the main purposes for which it is held, and that person's entitlement to access. As a matter of practicality, not every item of personal information, however insignificant, will be capable of ascertainment.

Information Protection Principle 6 is modified by section 20(5) of the PPIPA. Section 20(5) of the PPIPA has the effect of importing sections 30-33 and Schedule 1 of the Freedom of Information Act 1989 ("FOI Act"), and treats them as if they were part of the PPIPA. That means that in any application under section 13, Council must consider the relevant provisions of the FOI Act. The Government Information (Public Access) Act 2009 will replace the FOI Act. The Government Information (Public Access) Act 2009 will come into effect on the day or days appointed by proclamation.

Any person can make application to Council by completing the appropriate form and submitting it to Council. An example is at Appendix 5.

Where a person makes an application for access under the PPIPA and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the FOI Act. However use of the FOI Act is to be a last resort.<sup>1</sup> The applicant has the right to insist on being dealt with under PPIPA.

Where council receives an application or request by a person as to whether council holds information about them, council will undertake a search of its records to answer the enquiry. Council may ask the applicant to describe what dealings the applicant has had with council in order to assist council to conduct the search.

Council will ordinarily provide a response to applications of this kind within 28 days of the application being made. The fee structure is commensurate to that of the Council's FOI Act rates structure.

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<sup>1</sup> The Government Information (Public Access) Act 2009 will replace the FOI Act. The Government Information (Public Access) Act 2009 will come into effect on the day or days appointed by proclamation

### Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

Information Protection Principle 6 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

### Existing exemptions under the Act

Compliance with Information Protection Principle 6 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25 (a) of the PPIPA permits non-compliance with Information Protection Principle 6 where Council is lawfully authorised or required not to comply with the principle.

Section 25 (b) of the PPIPA permits non-compliance with Information Protection Principle 6 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

### Reporting matters

The Council will issue a statement to be included on its Web page (if it has one) and in its Annual Report concerning the nature of personal information it regularly collects, the purpose for which the personal information is used and an individual's right to access their own personal information. The Council may also include the types of personal information it collects in its "FOI Statement of Affairs".<sup>2</sup>

### Effect of s.12 LGA

Nothing in this Principle prevents Council from dealing with a request for information about oneself under s.12 of the LGA.

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<sup>2</sup> The Government Information (Public Access) Act 2009 will replace the FOI Act. The Government Information (Public Access) Act 2009 will come into effect on the day or days appointed by proclamation

## Information Protection Principle 7 - Access to personal information held by agencies

### **Section 14 - Access to personal information held by agencies**

A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.

### The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

### Council Policy

Section 14 of the PPIPA requires a council, at the request of any person, to give access to that person to personal information held about them.

Compliance with Information Protection Principle 7 does not allow disclosure of information about other people. If access to information that relates to someone else is sought, the application must be made under the FOI Act,<sup>3</sup> unless Information Protection Principles 11 and 12 or the Public Register provisions apply.

Where a person makes an application for access under the PPIPA and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the FOI Act. However use of the FOI Act is to be a last resort. The applicant has the right to insist on being dealt with under PPIPA.

When considering an application under 14 of PPIPA, Council will consider sections 30-33 and Schedule 1 of the FOI Act<sup>4</sup> as if they were part of PPIPA.

Customers wishing to exercise their right of access to their own personal information should apply in writing or direct their inquiries to the General Manager, who will make a determination. A sample form is provided at Appendix 5.

Members of staff wishing to exercise their right of access to their personal information should apply in writing on the attached form or direct their inquiries to the Assistant Director of Corporate and Community Services, who will deal with the application.

In order to comply with the requirement to provide the requested information “without excessive delay or expense”, Council will ordinarily provide a response to applications of this kind within 28 days of the application being made, and Council will use a fee structure commensurate to that of the FOI Act fee structure.

### Effect of s.12 LGA

Nothing in this Principle prevents Council from dealing with a request for information about oneself under s.12 of the LGA.

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<sup>3</sup> The Government Information (Public Access) Act 2009 will replace the FOI Act. The Government Information (Public Access) Act 2009 will come into effect on the day or days appointed by proclamation

<sup>4</sup> The Government Information (Public Access) Act 2009 will replace the FOI Act. The Government Information (Public Access) Act 2009 will come into effect on the day or days appointed by proclamation

Access to personal information contained in Council Business papers for a “Closed Meeting” should be provided with care to not disclose any other information.

Personal information contained in Council Business papers for a “Open Meeting” is published and therefore **not** considered to be covered by the PPIPA.

### Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

Information Protection Principle 7 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council’s conduct of any lawful investigation.

### Existing exemptions under the Act

Compliance with Information Protection Principle 7 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 7 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA non-compliance with Information Protection Principle 7 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

## Information Protection Principle 8 - Alteration of personal information

### **Section 15 :Alteration of personal information**

- (1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:
  - (a) is accurate, and
  - (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.
- (2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.
- (3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.

### The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

### Council Policy

Section 15 of the PPIPA allows a person to make an application to council to amend personal information held about them so as to ensure the information is accurate, and, having regard to the purpose for which the information is collected, relevant to that purpose, up to date and not misleading.

Council wishes to have its information current, accurate and complete. Proposed amendments or changes to the personal information held by the Council are welcomed.

However, Council will not provide access under section 15 to information that would not be allowed under section 14 of PPIPA.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the Assistant Director of Corporate and Community Services in the first instance and treated in accordance with the "Grievance and Complaint Handling Procedures".

Any alterations that are or could be the subject of a customer complaint or grievance will be referred to the General Manager, who will make a determination in relation to the matter.

### Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

Information Protection Principle 8 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council's conduct of any lawful investigation.

### Existing exemptions under the Act

Compliance with Information Protection Principle 8 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25 (a) of the PPIPA permits non-compliance with Information Protection Principle 8 where Council is lawfully authorised or required not to comply with the principle.

Section 25 (b) of the PPIPA permits non-compliance with section Information Protection Principle 8 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

### Procedure

Where information is requested to be amended, the individual to whom the information relates, must make a request by way of statutory declaration. That request should be accompanied by appropriate evidence as to the cogency of the making of the amendment, sufficient to satisfy the Council that the proposed amendment is factually correct and appropriate. The Council may require further documentary evidence to support certain amendments. Council will not charge to process an application to amend a record under s.15.

The Council’s application form for alteration under IPP 8 is at Appendix 6 at the end of this Plan.

### Where Council is not prepared to amend

If the Council is not prepared to amend the personal information in accordance with a request by the individual the Council may attach to the information in such a manner as is capable of being read with the information, any statement provided by that individual.

### Where an amendment is made

If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have the recipients of that information notified of the amendments made by the Council.

The Council will seek to notify recipients of information as soon as possible, of the making of any amendment, where it is reasonably practicable.

### State Records Act

The State Records Act does not allow for the deletion of records. However, as a result of section 20(4) of the PPIPA, some deletions may be allowed in accordance with Information Protection Principle 8.

### FOI Act

Nothing in PPIPA affects the operation of the *Freedom of Information Act 1989*,<sup>5</sup> and therefore applications to amend records under that Act remain in force as an alternative mechanism.

### **Information Protection Principle 9 - Agency must check accuracy of personal information before use**

#### **Section 16 - Agency must check accuracy of personal information before use**

A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.

#### **The Privacy Code of Practice for Local Government**

The Code makes no provision to depart from this principle.

#### **Council Policy**

The steps taken to comply with section 16 will depend on the age of the information, its likelihood of change and the particular function for which the information was collected.

The more significant the information, the greater the necessity that checks to ensure its accuracy and currency be undertaken prior to its use.

For example, each employee's record should be updated when there is any change of circumstances or when the employee's contact details change.

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<sup>5</sup> The Government Information (Public Access) Act 2009 will replace the FOI Act. The Government Information (Public Access) Act 2009 will come into effect on the day or days appointed by proclamation

## Information Protection Principle 10 - Limits on use of personal information

### **17 Limits on use of personal information**

A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:

- (a) the individual to whom the information relates has consented to the use of the information for that other purpose, or
- (b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
- (c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.

### The Privacy Code of Practice for Local Government

The Code makes provision that Council may use personal information for a purpose other than the purpose for which it was created in the following circumstances:

- (i) where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s; or
- (ii) where personal information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of personal recognition.

### Explanatory Note

Council may use personal information obtained for one purpose for another purpose in pursuance of its lawful and proper functions. For example, the Rates Record that Council holds under section 602 of the LGA may also be used to:

- ◆ notify neighbours of a proposed development;
- ◆ evaluate a road opening; or
- ◆ evaluate a tree preservation order.

### Council Policy

Council will seek to ensure that information collected for one purpose will be used for that same purpose. Where Council may need to use personal information collected for one purpose for another purpose, it will first gain the consent of the individual concerned, unless an exemption applies.

### External and related bodies

Each of the following will be required to comply with the Information Protection Principle 10:

- ◆ Council owned businesses
- ◆ Council consultants;
- ◆ Private contractors; and
- ◆ Council committees.

Council will seek to contractually bind each of these bodies or persons to comply.

Where any of the above seek to use personal information collected for one purpose, that body or person will be required to obtain the written consent of those persons in accordance with section 17 (2) to the use of the information for another purpose.

**The form of consent should include the following elements:**  
**I, (insert name)**  
**of, .....(insert address)**  
**hereby consent under section 17(2) of the Privacy and Personal Information Protection Act 1998 to Council using the information collected from me by (insert 1<sup>st</sup> purpose or name of collecting body or person) for the purpose of.....(insert 2<sup>nd</sup> purpose ).**  
**Signed and Dated.....**

Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

Information Protection Principle 10 is modified by the Investigative Code to permit non-compliance if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) Council’s conduct of any lawful investigation.

Existing exemptions under the Act

Compliance with Information Protection Principle 10 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(4) of the PPIPA permits Council not to comply with Information Protection Principle 10 where the use of the information for another purpose is reasonably necessary for law enforcement purposes or for the protection of the public revenue. *Law enforcement purposes* means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person. *Protection of the public revenue* means a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty.

Section 24 (4) of the PPIPA permits non-compliance with Information Protection Principle 10 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) if the use is reasonably necessary in order to enable the Council to exercise its complaint handling or investigative functions.

Section 25 (a) of the PPIPA permits non-compliance with Information Protection Principle 10 where Council is lawfully authorised or required not to comply with the principle.

Section 25 (b) of the PPIPA permits non-compliance with section Information Protection Principle 10 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (eg., the Department of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister’s (or Premier’s) administration.

## Information Protection Principle 11 - Limits on disclosure of personal information

### **Section 18 - Limits on disclosure of personal information**

- (1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:
  - (a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or
  - (b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or
  - (c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.
- (2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

### The Privacy Code of Practice for Local Government

The Code makes provision for council to depart from this principle in the circumstances described below:

1. Council may disclose personal information to public sector agencies or public utilities on condition that:
  - (i) the agency has approached Council in writing;
  - (ii) Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency, and
  - (iii) Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's function/s.
2. Where personal information which has been collected about an individual is to be disclosed for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition.
3. Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

### Council Policy

Council will not disclose the information to another person or other body, unless the disclosure is directly related to the purpose for which the information was collected or where the Council has no reason to believe that the individual concerned would object to the disclosure.

Council may disclose personal information to another person or other body where this disclosure is directly related to the purpose for which the personal information was collected and the individual concerned is reasonably likely to have been aware, (or has been made aware in accordance with section 10), of the intended recipients of that information. "Directly related" can mean the disclosure to another person or agency to deliver a service which supplements that of Council or disclosure to a consultant for the purpose of assessing or reviewing the delivery of a program to which the original collection relates.

The council may disclose personal information to another person or other body where this disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

### Public Registers

Section 18 of PPIPA does not apply to the information held on Public Registers. Instead refer to Part 2 of this Plan.

### Effect of section 12 of LGA

Section 12 of the LGA overrides sections 18 and 19 of PPIPA to the extent that it lawfully authorises, requires, necessarily implies or reasonably contemplates that councils need not comply with these sections.

### Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

Information Protection Principle 11 is modified by the Investigative Code to permit non-compliance if disclosure of information is made to another agency that is conducting, or may conduct, a lawful investigation. The information provided must be reasonably necessary for the purposes of that investigation.

### Existing exemptions under the Act

Compliance with Information Protection Principle 11 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(5)(a) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is made to a law enforcement agency in connection with proceedings for an offence or for law enforcement purposes. *Law enforcement purposes* means a breach of the criminal law and criminal law enforcement. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(b) of the PPIPA permits non-compliance with Information Protection Principle 11 where the disclosure is made to a law enforcement agency for the purpose of ascertaining the whereabouts of a person reported to be missing. However Council need

not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(c) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is authorised by subpoena, search warrant or other statutory instrument. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(d)(i) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary for the protection of the public revenue. *Protection of the public revenue* could mean a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(d)(ii) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary to investigate an offence where there are reasonable grounds to believe an offence has been committed.

Section 24(4) of the PPIPA permits non-compliance with Information Protection Principle 11 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency, and
- (ii) if the disclosure is to an investigative agency.

(Note: “investigative agency” is defined at s.3 of PPIPA.)

Section 25 (a) of the PPIPA permits non-compliance with Information Protection Principle 11 where Council is lawfully authorised or required not to comply with the principle.

Section 25 (b) of the PPIPA permits non-compliance with Information Protection Principle 11 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (eg. the Department of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister’s (or Premier’s) administration.

It is anticipated that a disclosure of personal information for research purposes will be allowed under a s.41 Direction made by the Privacy Commissioner until such time as a Research Code of Practice is made by the Attorney General.

### Suppression

Information held by Council may be suppressed such as to disallow disclosure that would otherwise be allowed in the circumstances outlined above. See Part 1 of this Plan for more details about suppression of personal information.

## Information Protection Principle 12 - Special restrictions on disclosure of personal information

### **Section 19 Special restrictions on disclosure of personal information**

(1) A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

(2) A public sector agency that holds personal information must not disclose the information to any person or body who is in a jurisdiction outside New South Wales unless:

(a) a relevant privacy law that applies to the personal information concerned is in force in the that jurisdiction, or

(b) the disclosure is permitted under a privacy code of practice.

(3) For the purposes of subsection (2), a **relevant privacy law** means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.

(4) The Privacy Commissioner is, within the year following the commencement of this section, to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales.

(5) Subsection (2) does not apply:

(a) until after the first anniversary of the commencement of this section, or

(b) until a code referred to in subsection (4) is made,

whichever is the later.

### The Privacy Code of Practice for Local Government

The Code makes provision for Council to depart from this principle in the circumstances described below:

1. For the purposes of s.19(2) only, where Council is requested by a potential employer outside New South Wales, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

### Council Policy

Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

### Public Registers

Section 19 of PPIPA does not apply to the information held on Public Registers. Instead refer to Part 2 of this Plan.

### Effect of section 12 of LGA

Section 12 of the LGA overrides sections 18 and 19 of PPIPA to the extent that it lawfully authorises, requires, necessarily implies or reasonably contemplates that councils need not comply with these sections.

## Investigative Code of Practice

Where Council is conducting an investigation, the Investigative Code of Practice prepared by Privacy NSW and made by the Attorney-General will apply.

The Investigative Code modifies Information Protection Principle 12 to permit the disclosure of information to another agency that is conducting, or may conduct, a lawful investigation provided the information is reasonably necessary for the purposes of that investigation.

## Existing exemptions under the Act

Compliance with Information Protection Principle 12 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(7) of the PPIPA permits non-compliance with Information Protection Principle 12 where the disclosure is necessary to investigate an offence or where there are reasonable grounds to believe an offence has been or may be committed.

Section 25 (a) of the PPIPA permits non-compliance with Information Protection Principle 12 where Council is lawfully authorised or required not to comply with the principle.

Section 25 (b) of the PPIPA permits non-compliance with Information Protection Principle 12 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

Section 26(2) of the PPIPA permits non-compliance where the person expressly consents to such non-compliance.

Section 28(2) permits non-compliance with Information Protection Principle 12 where, in the case of health information, the consent of the person cannot reasonably be obtained and the disclosure is made by an authorised person to another authorised person. “Authorised person” means a medical practitioner, health worker, or other official or employee providing health or community services who is employed or engaged by a public sector agency.

Section 28(3) of the PPIPA permits non-compliance where a disclosure is to be made to a public sector agency under the administration of the Minister for Local Government (eg. the Department of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister’s (or Premier’s) administration.

It is anticipated that a disclosure of personal information for research purposes will be allowed under a s.41 Direction made by the Privacy Commissioner until such time as a Research Code of Practice is made by the Attorney General.

## Suppression

Information held by Council may be suppressed such as to disallow disclosure that would otherwise be allowed in the circumstances outlined above. See Part 1 of this Plan for more details about suppression of personal information.

## **Part 4 – Information Protection Principle HRIP Act**

### **Health Privacy Principle 5**

Under the provisions of the Health Records and Information Privacy Act 2002 (NSW) (HRIP Act) Council has legal obligations describing what it must do when it collects, holds, uses and discloses health information.

#### **HRIP Privacy Principle 5 Retention and security states;**

- (1) An organisation that holds health information must ensure that:
- (a) the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
  - (b) the information is disposed of securely and in accordance with any requirements for the retention and disposal of health information, and
  - (c) the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
  - (d) if it is necessary for the information to be given to a person in connection with the provision of a service to the organisation, everything reasonably within the power of the organisation is done to prevent unauthorised use or disclosure of the information.

Note. Division 2 (Retention of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.

- (2) An organisation is not required to comply with a requirement of this clause if:
- (a) the organisation is lawfully authorised or required not to comply with it, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).
- (3) An investigative agency is not required to comply with subclause (1) (a).

Council will ensure that health information is stored securely, not kept any longer than necessary, and disposed of appropriately. Information will be protected from unauthorised access, use or disclosure.

# **Part 5 – Implementation of the Privacy Management Plan**

## **Training Seminars/Induction**

During induction, all employees should be made aware that the performance management system has the potential to include personal information on their individual work performance or competency.

Councillors, all staff of the Council including staff of council businesses, and members of council committees should be acquainted with the general provisions of the PPIPA, and in particular, the 12 Information Protection Principles, the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan and any other applicable Code of Practice.

## **Responsibilities of the Privacy Contact Officer**

It is assumed that the Public Officer within Council will be assigned the role of the Privacy Contact Officer unless the General Manager has directed otherwise.

In order to ensure compliance with PPIPA, the Privacy Contact Officer will review all contracts and agreements with consultants and other contractors, rates notices, application forms of whatsoever nature, and other written requests by which personal information is collected by Council, to ensure that Council is in compliance with the PPIPA.

Interim measures to ensure compliance with IPP 3 in particular may include the creation of stamps or printed slips that contain the appropriate wording (see Appendices 2 and 3).

The Privacy Contact Officer will ensure Council in its public areas has special provisions for working with computer screens. Computer screens may require:

- ◆ fast screen savers;
- ◆ face the computers away from the public; or
- ◆ only allow the record system to show one record at a time.

Council's electronic databases should also be reviewed to ensure that they contain procedures and protocols to check the accuracy and currency of personal information.

The Privacy Contact Officer will also provide opinions within Council as to:

- (i) Whether the personal information is collected for a lawful purpose;
- (ii) If that lawful purpose is directly related to a function of Council; and
- (iii) Whether or not the collection of that personal information is reasonably necessary for the specified purpose.

Any further concerns of a legal nature will be referred to Council's solicitor.

Should the Council require, the Privacy Contact Officer may assign designated officers as

“Privacy Resource Officers”, within the larger departments of Council. In this manner the Council may ensure that the information protection principles are more broadly understood and that individual departments have a greater focus on the information protection principles and are directly applied to Council’s day to day functions.

### **Distribution of information to the public**

Council may prepare its own literature such as pamphlets on the PPIPA, or it may obtain and distribute copies of literature available from Privacy NSW.

Council may also publish public notices, newsletters or website bulletins explaining the key elements of the Act and the rights of persons about whom information is held. See the discussion in this Plan with respect to IPP 6 for more information in this regard.

The Privacy Contact Officer will ensure that the next available rates notice includes a notice which:

- (i) mentions the commencement of the new PPIPA;
- (ii) states that Council holds personal information;
- (iii) mentions that Council may use and disclose personal information in various circumstances; and
- (iv) states that for further information, please contact the Privacy Contact Officer on (telephone number)

Council may however choose to do a council-wide letterbox drop in preference to (or in addition to) an insert in the rates notices.

## **Part 6 - Internal Review**

### **How does the process of Internal Review operate?**

Complaints are to be made within **6 months** of the complainant being first aware of the conduct. The complaint is to be in writing and addressed to Council's Privacy Contact Officer. The Privacy Contact Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the complaint. The Reviewing Officer must be an employee and suitability qualified. The review is to be completed within **60 days** of the lodgement of the complaint. The Council must notify the complainant of the outcome of the review within **14 days** of its determination.

The Privacy Commissioner must be notified of a complaint, briefed on progress and notified of the outcome of an internal review under PPIPA.

### **What happens after an Internal Review?**

If the complainant remains unsatisfied, he/she may appeal to the Administrative Decisions Tribunal which hears the matter afresh and may impose its own decision and award damages for a breach of an information protection principle to an amount up to \$40,000.00.

## Part 7 – Other Relevant Matters

### Contracts with consultants and other private contractors

It is necessary to have specific provisions to protect the Council in any dealings with private contractors.

### Confidentiality

The obligation of confidentiality is additional to and separate from that of privacy. Nevertheless, a duty to withhold information lies at the heart of both concepts. Confidentiality attaches to information per se, personal information to the person to whom that information relates.

An obligation of confidentiality exists for all employees whether express or implied as a matter of law.

Information which may be confidential is also likely to have a separate and independent obligation attaching to it in the form of privacy and in that regard, a release for the purposes of confidentiality will not suffice for privacy purposes. Two separate releases will be required and, in the case of privacy, the person to whom the information relates will be required to provide the release.

### Misuse of personal information

Section 664 of the LGA makes it an offence for anyone to disclose information except in accordance with that section. Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion from case to case.

### Regular review of the collection, storage and use of personal information

The information practices relating to the collection, storage and use of personal information will be reviewed by the Council every three (3) years. Any new program initiatives will be incorporated into the review process with a view to ascertaining whether or not those programs comply with the PPIPA.

### Regular Review of Privacy Management Plan

Once the information practices are reviewed from time to time, the Privacy Management Plan will also be reviewed to ensure that the Plan is up to date.

**STATUTORY DECLARATION FOR ACCESS UNDER SECTION 57 OF THE PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 TO A PUBLIC REGISTER HELD BY COUNCIL**

**STATUTORY DECLARATION  
OATHS ACT, 1900, NINTH SCHEDULE**

I, the undersigned, .....(name of applicant)  
of.....(address),  
in the State of New South Wales, do solemnly and sincerely declare that:-

I am.....(relationship (if any) to person inquired about)

I seek to know whether ..... is on the public register of .....\*

The purpose for which I seek this information is .....

The purpose for which the information is required is to .....

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1994.

Declared at.....

in the said State this                      day of                      2009  
before me.

.....  
before me:  
Justice of the Peace/Solicitor

.....  
Name to be printed

\* Applicant to describe the relevant public register.

**Privacy Notification Form - Section 10 (Post – Collection)**

*(Addressed to the person from whom information has been collected.)*

The personal information that Council has collected from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998.

The intended recipients of the personal information are:

- ◆ officers within the Council;
- ◆ data service providers engaged by the Council from time to time;
- ◆ any other agent of the Council; and
- ◆ *(any other)*.

The supply of the information by you *is / is not* voluntary. If you cannot provide or do not wish to provide the information sought, the Council may .....

Council has collected this personal information from you in order to .....

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the PPIPA.

Council\* is to be regarded as the agency that holds the information.

Enquires concerning this matter can be addressed to .....

Signed.....

Dated.....

\*Please state who holds or controls the information if not Council

### Privacy Notification Form - Section 10 (Pre -Collection)

*(Addressed to the person from whom information is about to be collected or has been collected.)*

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 (“the Act”).

The intended recipients of the personal information are:

- ◆ officers within the Council;
- ◆ data service providers engaged by the Council from time to time;
- ◆ any other agent of the Council; and
- ◆ *(any other)*.

The supply of the information by you *is / is not* voluntary. If you cannot provide or do not wish to provide the information sought, the Council may/will be unable to process your application.

Council is collecting this personal information from you in order to .....

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Council\* is to be regarded as the agency that holds the information.

Enquires concerning this matter can be addressed to .....

Signed.....

Dated.....

\*Please state who holds or controls the information if not Council

**APPLICATION UNDER SECTION 13 OF THE PRIVACY AND  
PERSONAL INFORMATION PROTECTION ACT 1998 –  
TO DETERMINE WHETHER COUNCIL HOLDS PERSONAL  
INFORMATION ABOUT A PERSON**

**Personal information held by the Council**

I, \_\_\_\_\_, of (address), hereby request the General Manager of Council provide the following :

Does the Council hold personal information about me ? YES/NO

If so, what is the nature of that information?

.....  
.....  
.....

What is the main purpose for holding the information?

.....  
.....  
.....

Am I entitled to access the information? YES/NO

My address for response to this Application is:

.....  
.....  
.....

Note to applicants

Should you provide your address or any other contact details the Council will not record those details for any other purpose other than to respond to your application.

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (“the Act”). There is a separate application form to gain access.

The Council may refuse to process this application in part or in whole if:

- ◆ there is an exemption to section 13 of the Act; or
- ◆ a Code may restrict the operation of section 14.

**APPLICATION UNDER SECTION 14 OF THE PRIVACY AND PERSONAL  
INFORMATION PROTECTION ACT 1998 -  
FOR ACCESS TO APPLICANT'S PERSONAL INFORMATION**

Personal information held by Council

I, (name).....

of (address), .....

hereby request that the Council provide me with:

- (a) access to **all** personal information held concerning myself; or
- (b) access to the following personal information only.....

Note to applicants :

As an applicant, you have a right of access to your personal information held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 ("the Act").

You are entitled to have access without excessive delay or cost.

Council may refuse to process your Application in part or in whole if:

- ◆ the correct amount of fees has not been paid;
- ◆ there is an exemption to section 14 of the Act; or
- ◆ a Code of Practice may restrict disclosure.

Enquires concerning this application should be made to .....

**APPLICATION UNDER SECTION 15 OF THE PRIVACY AND PERSONAL  
INFORMATION PROTECTION ACT 1998 –  
FOR ALTERATION OF APPLICANT’S PERSONAL INFORMATION**

Personal Information held by Council

I, (name).....  
of (address), .....  
hereby request the Council to alter personal information regarding myself in the following  
manner :

I propose the following changes:  
.....

The reasons for the changes are as follows :  
.....

The documentary bases for those changes is as shown on the attached documents :  
.....

Note to Applicants :

You have a right to request appropriate amendments are made (whether by way of corrections, deletions or additions) to ensure that the personal information held by the Council :

- (a) is accurate, and
- (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.

If Council is not prepared to amend the personal information in accordance with a request by you, Council must take such steps as are reasonable to attach to the information in such a manner as is capable of being read with the information, any statement provided by you.

If your personal information is amended, you are entitled under the Privacy and Personal Information Protection Act 1998 (“the Act”), if it is reasonably practicable, to the have recipients of that information notified of the amendments made by Council.

Council may refuse to process your application in part or in whole if:

- ◆ there is an exemption to section 15 of the Act; or
- ◆ a Code of Practice may restrict alteration.

Enquires concerning this application should be made to .....