



Inc.1874  
**Burwood**

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## PRIVACY MANAGEMENT PLAN

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PO Box 240, BURWOOD NSW 1805  
2 Conder Street, BURWOOD NSW 2134

Phone: 9911-9911 Fax: 9911-9900

Email: [council@burwood.nsw.gov.au](mailto:council@burwood.nsw.gov.au)

Website: [www.burwood.nsw.gov.au](http://www.burwood.nsw.gov.au)

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## PART 1 – INTRODUCTION

### Purpose

The *Privacy and Personal Information Protection Act 1998 (NSW) (PIPPA)* requires all public sector agencies to prepare and implement a Privacy Management Plan.

The purpose of this plan is to outline how Burwood Council will manage personal information and health information in accordance with PPIPA and the *Health Records and Information Privacy Act 2002 (HRIPA)*. These Acts provide for the protection of personal and health information and for the protection of the privacy of individuals.

### Scope

This plan applies to all council officials at Burwood Council. A breach of this policy constitutes a breach of the Council's *Codes of Conduct* and may lead to disciplinary action.

### Definitions

<b>Council official</b>	Councillors, employees and delegates (including volunteers, consultants, contractors or any other service provider involved in exercising a Council function).
<b>GIPA Act</b>	Means the <i>Government Information (Public Access) Act 2009</i> .
<b>Health information</b>	Information or an opinion about a person's physical or mental health or disability, or information relating to the provision of health services to a person. Health information can include a psychological report, blood tests or an x-ray, results from drug and alcohol tests, information about a person's medical appointments, and information regarding vaccination status. It can also include some personal information that is collected to provide a health service, such as a name and telephone number.
<b>Health record</b>	Means an ongoing record of health care for an individual.
<b>Health records linkage system</b>	Means a computerised system that is designed to link health records for an individual held by different organisations for the purpose of facilitating access to health records, and includes a system or class of systems prescribed by the regulations as being a health records linkage system, but does not include a system or class of systems prescribed by the regulations as not being a health records linkage system.
<b>HPP</b>	Refers to a Health Privacy Principle prescribed under the <i>Health Records and Information Privacy Act 2002</i> .
<b>HRIPA</b>	Means the <i>Health Records and Information Privacy Act 2002</i> .
<b>IPC</b>	Means the NSW Information and Privacy Commission.
<b>IPP</b>	Refers to an Information Privacy Principle prescribed under the <i>Privacy and Personal Information Protection Act 1998</i> .
<b>LG Act</b>	Means the <i>Local Government Act 1993</i> .

<b>MNDB</b>	Means the Mandatory Notification of Data Breaches Scheme established under Part 6A of the <i>Privacy and Personal Information Protection Act 1998</i> of NSW.
<b>Officer</b>	For the purposes of this policy, any reference to the term “officer” is taken to mean all Council officials other than councillors or administrators who are involved in exercising a council function.
<b>Personal information</b>	See section 5 of this plan.
<b>Public register</b>	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). See section 3 of PPIPA.
<b>Privacy Act</b>	Means the <i>Privacy Act 1988</i> of the Commonwealth.
<b>PPIPA</b>	Means the <i>Privacy and Personal Information Protection Act 1998</i> of NSW.
<b>the Code</b>	Mean the <i>Privacy Code of Practice for Local Government</i> made under Part 3 of the <i>Privacy and Personal Information Protection Act 1998</i> .

## Policy statement

Burwood Council is committed to complying with the Information Protection Principles set out in the PPIPA and the Health Privacy Principles set out in the HRIPA.

Council will collect, hold, disclose and manage personal information and health information for the purpose of its functions, operations and activities and in compliance with relevant NSW privacy laws and guidelines.

### Personal information — what is and isn't personal information?

Section 4 of the PPIPA defines personal information as:

information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

However, 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 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 8 of the GIPA Act).

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.

Section 4A of the PPIPA also specifically excludes “health information” (as defined by Section 6 of the HRIPA) from the definition of personal information. However, health information is included in the PPIPA’s consideration of public registers. Information about Council’s treatment of health information and public registers is covered in Part 2 of this plan.

## Personal information held by Council

Burwood Council holds personal information concerning Councillors, such as:

- personal contact information
- complaints and disciplinary matters
- pecuniary interest returns
- entitlements to fees, expenses and facilities
- payroll and superannuation data
- professional development plans

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

- rates records
- development applications and related submissions
- customer requests, including recordings of telephone calls and web chats with the customer service team
- library records
- Enfield Aquatic Centre records
- donation, grant and sponsorship applications
- Submissions and informant collected as part of Council's community engagement and consultation activities
- CCTV footage
- various types of health information

The Council holds personal information concerning its employees, contractors, advisory committee members and volunteers, such as:

- recruitment material
- leave and payroll data
- personal contact information
- qualifications and certifications relevant to the job
- performance management plans
- disciplinary matters
- pecuniary interest returns
- wage and salary entitlements
- health information (such medical certificates and workers' compensation claims)

## Unsolicited information

Unsolicited information is personal or health information received by Council in circumstances where Council has not asked for or required the information to be provided. It includes volunteered, gratuitous or irrelevant information received.

Such information is not deemed to have been collected by Council, meaning the Information Protection Principles relating to collection do not apply to that information. However, the retention, use and disclosure principles will apply to any such information in Council's possession.

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

Under Section 739 of the LGA a person can make an application to suppress certain material that is available for public inspection in circumstances where the material discloses or would disclose the person's place of living if the person considers that the disclosure would place the personal safety of the person or their family at risk.

Section 739 of the LGA relates to publicly available material 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.

## PART 2 – PUBLIC REGISTERS

### Public registers held by Council

Council is required by law to maintain a number of public registers and to make them available for public inspection. Council will maintain a Table of Public Registers held by Council, which will be published on Council's website, together with this plan.

Some parts of the public register may already be available in published form. The PIPPA does not apply to personal information that has already been legitimately published that way. Anything not already published legitimately will be subject to the procedures for disclosure outlined in this Part.

For example, the *Environmental Planning and Assessment Act 1979* 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, being the Register of Consents and Certificates held by Council under Section 4.58 of the *Environmental Planning and Assessment Act 1979*.

### Disclosure of personal information contained in public registers

Some of these registers contain personal information. Personal information contained in a public register, other than where required by legislation, will only be disclosed where Council satisfied that the information is to be used for a purpose consistent with the purpose of the register. (See section 57 of PPIPA.)

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

A person seeking access to someone else's personal information contained in a public register will be expected to provide Council with information in writing about the purpose for which the information will be used. Council may request a statutory declaration as to the purpose for which access to the information is being sought. If the purpose is not consistent with the purpose of the public register, 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 PPIPA or as health information for the purposes of Part 6 of PPIPA.

### Purposes of public registers

Some registers have been created to serve a number of purposes. The following section provides guidance on the primary purpose of some of the public registers held by Council. In some cases, a secondary purpose has also been identified as a guide to what might constitute a "purpose relating to the register" under Section 57 (1) of PPIPA.

### Purposes of Public Registers under the LG Act

- **Land Register (Section 53)** – 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.
- **Records of Approvals (Section 113)** – The primary purpose is to identify all approvals granted under the LG Act. There is a corresponding public accountability purpose and third party access is a secondary purpose.
- **Register of Pecuniary Interests Returns (Section 440AAB)** – The primary purpose of this register is to record the tabling of returns of disclosures of pecuniary interests by councillors and other designated persons under the *Codes of Conduct*. There is a corresponding public accountability purpose and third party access is a secondary purpose.
- **Rates Record (Section 602)** – The primary purpose is to record the value and category of a parcel of land, rate liability (including any exemptions) in respect of that land, and the rates and charges levied on that land. The secondary purpose includes recording the owner or lessee of each parcel of land.

For example, a disclosure on a rating certificate under Section 603 of the LGA 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 1979*

- ***Register of consents and certificates (Section 4.58)*** – The primary purpose is to identify applications for development consent, the determinations (and any terms) of those applications, the determinations (and any terms) of complying development certificates, and any decisions on appeal from such determinations.
- ***Record of building information certificates (Section 6.26)*** – The primary purpose is to identify all building certificates. Inspection of that record by the public is a secondary purpose. However, Section 6.26 requires that a copy can only be made with the consent of the owner of the building.

### Purposes of Public Registers under the *Protection of the Environment Operations Act 1997*

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

### Purposes of the public register under the *Public Spaces (Unattended Property) Act 2021*

- ***Record of property taken possession of (Section 33)*** – The primary purpose is to identify any property that is taken possession of by Council under the Act. There is a corresponding public accountability purpose and third party access is a secondary purpose.

### Secondary purposes of all public registers

Council aims to be open and accountable and considers 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 records from public registers would normally be considered to be allowable under Section 57 of 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 will 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 Code concerning Public Registers.

### 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 keep other registers that are not public registers. The Information Protection Principles, this Plan, the *Privacy Code of Practice for Local Government* and PPIPA apply to the use and disclosure of information in those registers.

Council may hold a register under the *Contaminated Land Management Act 1997* 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.

## **PART 3 – INFORMATION PRIVACY PROTECTION PRINCIPLES**

This Part outlines how Council complies with the IPPs prescribed under PPIPA.

### **COLLECTION OF INFORMATION**

#### **IPP 1 – Lawful collection (Section 8 of PPIPA)**

##### **Council policy**

- Council collects personal information only for a lawful purpose that is directly related to Council's functions and activities. Council's functions and activities are outlined in its [Agency Information Guide](#).
- 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.
- Collection of information under the *Companion Animals Act 1998* and Council's use of the Companion Animals Register is guided by the Departmental Chief Executive's guidelines, which have been developed with the PPIPA in mind.
- The Code makes no provision to depart from the requirements of this principle.

##### **Role of Privacy Contact Officer**

- In order to ensure compliance with IPP 1, internet contact forms, rates notices, application forms of whatever 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. Burwood Council's Privacy Contact Officer is the Public Officer (Manager Governance & Risk). The Privacy Contact Officer will also provide advice as to:
  - Whether the personal information is collected for a lawful purpose
  - If that lawful purpose is directly related to a function of Council
  - 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.

#### **IPP 2 – Direct collection (Section 9 of PPIPA)**

##### **Council policy**

- Council collects personal information directly from the person concerned, except as provided for in Section 9 or under other statutory exemptions or Codes of Practice.

- The compilation or referral of registers and rolls are the major means by which the Council collects personal information. 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. Council also collects personal information by way of recordings of telephone conversations and web chats with our customer service team.
- 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 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.
- 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.
- Where Council cannot collect personal information directly from the person, it will ensure one of the following:
  - Council has obtained authority from the person under Section 9(a) of the PPIPA.
  - 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.)
  - The collection of personal information from a parent or guardian is permitted provided the person is less than 16 years of age.
  - The collection of personal information indirectly where one of the below statutory exemptions applies.
  - 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.

### **Existing statutory exemptions under PIPPA**

- Compliance with IPP 2 is also subject to certain exemptions under PPIPA. 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 are:
  - Section 23(2) of the PPIPA permits non-compliance with IPP 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 extends the operation of Section 24(1) to Councils and permits non-compliance with IPP 2 if a Council is:
    - investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency
    - 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 IPP 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 IPP 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 IPP 2 if compliance would prejudice the interests of the individual concerned.

## **IPP 3 – Requirements when collecting (Section 10 of PPIPA)**

### **Council policy**

- Council informs people why their personal information is being collected, what it will be used for, and to whom it will be disclosed.
- Council will tell people how they can access and amend their personal information and any possible consequences, if they decide not to give their personal information to us.
- Council will inform persons if the information is required by law or voluntarily given.
- Council will inform individuals which department or business unit 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.
- 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.

### **Post-collection**

- Where Council collects personal information indirectly from another public sector agency in respect of any one of its statutory functions, it will endeavour to advise those individuals that it has collected their personal information (for example, in the case of a change of property ownership, by including a privacy notification form in the next issue of their rates notice).
- 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.

## **IPP 4 – Relevance of collection (Section 11 of PPIPA)**

### **Council policy**

- Council ensures personal information is relevant, accurate, is not excessive and does not unreasonably intrude into the personal affairs of people.
- 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 IPP 4 by the Public Officer or other suitable person. Should there be any residual doubts, advice will be sought from the IPC.
- When contacting Council's customer service team by telephone or web chat, customers are advised that the call is being recorded or the chat transcript is retained.
- The *Privacy and Personal Information Protection Regulation 2019* provides that local councils are exempt from Section 11 of PPIPA in with respect to the collection of personal information by using a CCTV camera that the council installs for the purpose of filming a public place, if the camera is positioned so no other land is filmed (unless it is not reasonably practicable to avoid filming the other land when filming the public place).
- Council manages personal data images collected via the use of closed circuit television in accordance with the NSW Government policy statement and guidelines for the establishment and implementation of closed circuit television (CCTV) in public places, the PPIPA and the Work Place Surveillance Act 2005.
- The Code makes no provision to depart from the requirements of this principle.

### **Collection by external and related bodies**

- Anyone or anybody exercising a function of Council will be required to comply with this Plan, any applicable Privacy Code of Practice, and the PPIPA. This includes:
  - Council owned businesses
  - Council consultants
  - Private contractors
  - Council committees
- Council will seek to contractually bind each of these entities 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
  - notify those persons in accordance with IPP 3 as to the intended recipients and other matters required by that principle.

### **Collection in relation to investigations**

- Where Council is conducting an investigation, it will have regard to any applicable direction of the Privacy Commissioner under Section 41 of the PPIPA that may affect the application of IPPs 1 to 4.

## **STORAGE OF INFORMATION**

### **IPP 5 – Retention and security of information (Section 12 of PPIPA)**

#### **Council policy**

- Information is kept for no longer than is necessary for the purposes for which the information may lawfully be used
- Information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information
- 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
- If it is necessary for Council to give information to a person in connection with the provision of a service to Council, everything reasonably within the power of the Council is done to prevent unauthorised use or disclosure of the information
- Council may use the following or similar documents to comply with this principle:
  - Records Management Plan
  - Records Storage Maintenance and Monitoring Procedure
  - Records Counter Disaster Plan and Vital Records Corporate Practice
  - Records Removed from Council Premises Procedure
  - Records Appraisal and Disposal Corporate Practice
  - Records Storage and Security Corporate Practice
  - Information Security Policy
- The Code makes no provision to depart from the requirements of this principle.

## **ACCESS AND ACCURACY OF INFORMATION**

### **IPP 6 – Transparency (Section 13 of PPIPA)**

#### **Council policy**

- Council is transparent about any personal information that is stored, what it is used for, and the right to access and amend it.
- Council notes that IPP 6 is subject to any applicable conditions or limitations contained in the GIPA Act.
- 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.
- Any person can make application to Council by completing the appropriate form and submitting it to Council.
- 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 Code makes no provision to depart from the requirements of this principle.

## **Collection in relation to investigations**

- Where Council is conducting an investigation, it will have regard to any applicable direction of the Privacy Commissioner under Section 41 of the PPIPA that may affect the application of IPP 6.

## **Existing statutory exemptions under PIPPA**

- Compliance with IPP 6 is also subject to certain exemptions under PPIPA. 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 are:
  - Section 25(a) of the PPIPA permits non-compliance with IPP 6 where Council is lawfully authorised or required not to comply with the principle.
  - Section 25(b) of the PPIPA permits non-compliance with IPP 6 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

## **Reporting matters**

Council will issue a statement to be included on its website 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.

## **IPP 7 – Accessibility (Section 14 of PPIPA)**

### **Council policy**

- Council allows people to access their own personal information without reasonable delay or expense.
- Customers wishing to exercise their right of access to their own personal information should apply in writing using the approved form or direct their inquiries to the Public Officer, who will make a determination.
- Members of staff wishing to exercise their right of access to their personal information should apply in writing using the approved form or direct their inquiries to the Director People & Performance, who will deal with the application.
- 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 GIPA Act. However, use of the GIPA Act is to be a last resort. The applicant has the right to insist on being dealt with under PPIPA.
- Under Section 20(5) of the PPIPA, IPA 7 is subject to any applicable conditions or limitations contained in the GIPA Act.
- 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.
- IPP 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 GIPA Act, unless Information Protection Principles 11 and 12 or the Public Register provisions apply.
- The Code makes no provision to depart from the requirements of this principle.

## **Existing statutory exemptions under PIPPA**

- Compliance with IPP 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. The relevant statutory exemptions are:
  - Section 25(a) of the PPIPA permits non-compliance with IPP 7 where Council is lawfully authorised or required not to comply with the principle.
  - Section 25(b) of the PPIPA non-compliance with IPP 7 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

**IPP 8 – Correctness of Information (Section 15 of PPIPA)****Council policy**

- Council allows people to update, correct or amend their personal information where necessary.
- Where information is requested to be amended (either by way of correction, deletion or addition), the individual to whom the information relates, must make a request. That request should be made using the approved form and 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 Section 15.
- 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. Council will seek to notify recipients of information as soon as possible, of the making of any amendment, where it is reasonably practicable.
- If Council declines to amend personal information as requested, it will, on request of the individual concerned, place an addendum on the information in accordance with Section 15(2) of the PPIPA.
- Where there are complaints about the accuracy of information that are, or could be, the subject of a staff complaint or grievance, they will be referred to the Director People & Performance 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.
- The Code makes no provision to depart from the requirements of this principle.

**State Records Act 1998**

- Under the *State Records Act 1998* the deletion of records only occurs in accordance with records disposal authorities. However, as a result of Section 15(1) of the PPIPA, some deletions, corrections and additions to records may be allowed in accordance with IPP 8. Where a record is deleted or altered in accordance with IPP 8, a record of that deletion or alteration having been made should be created to ensure a proper record audit trail.

**USE OF INFORMATION****IPP 9 – Ensuring accuracy of personal information before use (Section 16 of PPIPA)****Council policy**

- Council makes sure that personal information is relevant and accurate before using it.
- The steps taken to comply with IPP 9 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.
- The Code makes no provision to depart from the requirements of this principle.

**IPP 10 – Limits on use of personal information (Section 17 of PPIPA)**

- Council only uses personal information for the purpose it was collected for.
- 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.
- 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:

- 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
- 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.

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

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

### **External and related bodies**

- Anyone or anybody exercising a function of Council will be required to comply IPP 10. This includes:
  - Council owned businesses
  - Council consultants
  - Private contractors
  - 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(a) of the PPIPA to the use of the information for another purpose.

### **Investigative Functions**

- Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under Section 41 of the PPIPA that may affect the application of IPP 10.

### **Existing exemptions under the Act**

- Compliance with IPP 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. The relevant statutory exemptions are:
  - Section 23(4) of the PPIPA permits Council not to comply with IPP 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 extends the operation of Section 24(2) to Councils and permits non-compliance with IPP 10 where:
    - Council is investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency
    - the use of the information concerned for a purpose other than the purpose for which it was collected is reasonably necessary in order to enable the Council to exercise its complaint handling functions or any of its investigative functions.
- Section 25(a) of the PPIPA permits non-compliance with IPP 10 where Council is lawfully authorised or required not to comply with the principle.
- Section 25(b) of the PPIPA permits non-compliance with IPP 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 (e.g., the

Office 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.

## DISCLOSURE OF PERSONAL INFORMATION

### IPP 11 – Limits on disclosure of personal information ([Section 18 of PPIPA](#))

- 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 that 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.
- The Code makes provision for Council to depart from this principle in the following circumstances:
  - Council may disclose personal information to public sector agencies or public utilities on condition that:
    - the agency has approached Council in writing
    - Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency
    - Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's function/s
  - Where personal information that 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.
  - 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.
- Sections 18 and 57 of the PPIPA should be read in conjunction in regard to Public Registers. Public Registers are discussed further in Part 2 of this Plan.

### Investigative Functions

- Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under Section 41 of the PPIPA that may affect the application of IPP 11.

### 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. The relevant statutory exemptions are:
  - Section 23(5)(a) of the PPIPA permits non-compliance with IPP 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 IPP 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 IPP 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 IPP 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 IPP 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 IPP 11 if:
    - investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency
    - 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 IPP 11 where Council is lawfully authorised or required not to comply with the principle. Section 25(b) of the PPIPA permits non-compliance with IPP 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 (e.g. the Office 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 Section 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.

## **IPP 12 – Special restrictions on disclosure of personal information ([Section 19 of PPIPA](#))**

- 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.
- Sections 19 and 57 of the PPIPA should be read in conjunction in regard to Public Registers. Public Registers are discussed further in Part 2 of this Plan.

## **Investigative Functions**

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under Section 41 of the PPIPA that may affect the application of Information Protection Principle 12.

## 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. The relevant statutory exemptions are:

- Section 23(7) of the PPIPA permits non-compliance with IPP 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 IPP 12 where Council is lawfully authorised or required not to comply with the principle.
  - Section 25(b) of the PPIPA permits non-compliance with IPP 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 IPP 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 (e.g. the Office 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 Section 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.

## 1. PART 4 – HEALTH PRIVACY PRINCIPLES

Health information includes personal information that is information or an opinion about the physical or mental health or a disability of an individual. Health information also includes personal information that is information or an opinion about:

- a health service provided, or to be provided, to an individual
- an individual’s express wishes about the future provision of health services to him or her
- other personal information collected in connection with the donation of human tissue
- genetic information that is or could be predictive of the health of an individual or their relatives or descendants

Local councils will often hold health information by reason of their role in elder care, child care and various types of community health support services. It is therefore very important for Councils to be familiar with the 15 Health Protection Principles set down in Schedule 1 to the HRIPA. Each of these HPPs are considered below.

The following is a non-exhaustive list of examples of the types of health information and circumstances in which local councils may collect health information in exercising their functions:

- Tree pruning/removal application where residents approach council for a reconsideration or reassessment of a tree pruning/removal application on medical grounds
- Issuing of clean up orders that may include recording information about a resident’s health, GP professional contact details or involvement with mental health services

- Volunteer programs where volunteers are asked to disclose health conditions that may preclude them from some types of volunteer work
- Meals on Wheels programs where residents may be asked for medical or dietary requirements, e.g. allergies for catering purposes
- Seniors bus outings where information may be collected on special medical needs
- Councils may provide respite and social support services collecting information that is consistent with the client intake and referral record system
- Information on families for the purposes of children's services. e.g. history of illness, allergies, asthma, diabetes, epilepsy etc.
- Physical exercise classes
- Some councils run Podiatry services
- Information may be collected through a healthy community program
- Children's immunization records
- Family counsellor/youth support workers' records.

### **HPPs 1 to 4 – Collection of health information (Schedule 1, sections 1–4 of HRIPA)**

#### **Council policy**

- Council will only collect health information for a lawful purpose that is directly related to Council's activities and is necessary for that purpose (HPP 1).
- Council will ensure that the health information is relevant, accurate, up to date and not excessive and that the collection is not unnecessarily intrusive into the personal affairs of the individual (HPP 2).
- Council will only collect health information directly from the individual that the information concerns, unless it is unreasonable or impractical for Council to do so (HPP 3).
- Council will tell the person why the health information is being collected, what will be done with it, who else might see it and what the consequences are if the person decides not to provide it. Council will also tell the person how they can see and correct the health information (HPP 4).
- If Council collects health information about a person from someone else, Council will take reasonable steps to ensure that the subject of the information is aware of the above points (HPP 4).

#### **Exemptions**

- An organisation is not required to comply with HPP 4 if:
  - the individual to whom the information relates has expressly consented to the organisation not complying with it
  - the organisation is lawfully authorised or required not to comply with it
  - non-compliance is otherwise permitted (or necessarily implied or reasonably contemplated) under any Act or any other law including the *State Records Act 1998*
  - compliance by the organisation would, in the circumstances, prejudice the interests of the individual to whom the information relates the information concerned is collected for law enforcement purposes
  - the organisation is an investigative agency and compliance might detrimentally affect (or prevent the proper exercise of) its complaint handling functions or any of its investigative functions.

### **HPP 5 – Retention and security of health information (Schedule 1, Section 5 of HRIPA)**

#### **Council policy**

- Council will store health information securely and protect health information from unauthorised access, use or disclosure. Health information will not be kept for any longer than is necessary and will be disposed of appropriately

#### **Exemptions**

- An organisation is not required to comply with a requirement of HPP 5 if:
  - the organisation is lawfully authorised or required not to comply with it

- 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*).
- If the organisation is an investigative agency, it is not required to comply with the HPP 5 requirement to ensure the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used.

## **HPP 6 to 9 – Transparency about, access to, amendment of and accuracy of health information held and used by organisations (Schedule 1, Sections 6–9 of HRIPA)**

### **Council policy**

- Council will provide details about what health information Council is holding about an individual, information about why Council is storing that information, and what rights of access the individual has (HPP 6).
- Council will allow the individual to access his or her health information without reasonable delay or expense (HPP 7).
- Council will allow the individual to update, correct or amend his or her health information where necessary (HPP 8).
- Council will make sure that the health information is relevant and accurate before using it (HPP 9).

## **HPP 10 – Use of health information (Schedule 1, Section 10 of HRIPA)**

### **Council policy**

- Council will only use the health information for the primary purpose for which, unless it is for the person concerned has consented to its use or one of the secondary purposes described in Section 10 of Schedule 1 applies. Those secondary purposes include:
  - a purpose directly related to the primary purpose where the person would reasonably expect Council to disclose the information
  - where there is a serious threat to health or welfare
  - for the management of a health service
  - for the training of employees
  - for research, or the compilation or analysis of statistics, in the public interest
  - to assist a law enforcement agency in relation to a missing person
  - in relation to suspected unlawful activity, unsatisfactory professional conduct or a breach of discipline
  - for the exercise of law enforcement functions by a law enforcement agency where an offence may have been committed
  - for the exercise of complaint handling or investigation functions by an investigative agency (this extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency)
  - other circumstances prescribed by the regulations.

### **Exemptions**

- An organisation is not required to comply with HPP 10 if:
  - the organisation is lawfully authorised or required not to comply with the provision concerned
  - 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*).
- HPP 10 does not prevent or restrict the disclosure of health information by a public sector agency:
  - to another public sector agency under the administration of the same Minister, if the disclosure is for the purposes of informing that Minister about any matter within that administration

- to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.

### **HPP 11 – Disclosure of health information ([Schedule 1, Section 11 of HRIPA](#))**

#### **Council policy**

- Council will only disclose health information for the primary purpose for which, unless it is for the person concerned has consented to its use or one of the secondary purposes described in Section 10 of Schedule 1 applies. Those secondary purposes include:
  - a purpose directly related to the primary purpose where the person would reasonably expect Council to disclose the information
  - where there is a serious threat to health or welfare
  - for the management of a health service
  - for the training of employees
  - for research, or the compilation or analysis of statistics, in the public interest
  - to assist a law enforcement agency in relation to a missing person
  - in relation to suspected unlawful activity, unsatisfactory professional conduct or a breach of discipline
  - for the exercise of law enforcement functions by a law enforcement agency where an offence may have been committed
  - to an immediate family member of the individual for compassionate reasons
  - for the exercise of complaint handling or investigation functions by an investigative agency (this extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency)
  - other circumstances prescribed by the regulations.

#### **Exemptions**

- An organisation is not required to comply with HPP 11 if:
  - the organisation is lawfully authorised or required not to comply with the provision concerned
  - 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*).
- HPP 11 does not prevent or restrict the disclosure of health information by a public sector agency:
  - to another public sector agency under the administration of the same Minister, if the disclosure is for the purposes of informing that Minister about any matter within that administration
  - to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.

### **HPP 12 – Identifiers ([Schedule 1, Section 12 of HRIPA](#))**

#### **Council policy**

- Council will only give an identification number to health information if it is reasonably necessary for Council to carry out its functions effectively (HPP 12).

### **HPP 13 – Anonymity ([Schedule 1, Section 13 of HRIPA](#))**

#### **Council policy**

- Council will provide health services anonymously where it is lawful and practical to do so.

## **HPP 14 – Trans border data flows and data flow to Commonwealth agencies ([Schedule 1, Section 14 of HRIPA](#))**

- HPP 14 prevents the transfer of health information about an individual to any person or body who is in a jurisdiction outlines NSW or to a Commonwealth agency unless specified requirements are met.
- Council will only transfer personal information out of New South Wales if the requirements of HPP 14 are met.

## **HPP 15 – Linkage of health records ([Schedule 1, Section 15 of HRIPA](#))**

### **Council policy**

- Council will only include health information in a system to link health records across more than one organisation if the individual to whom the health information relates expressly consents to the link.

### **Exemptions**

- An organisation is not required to comply with HPP 15 if:
  - the organisation is lawfully authorised or required not to comply with the provision concerned
  - 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*)
  - the inclusion of the health information about the individual in the health records information system (including an inclusion for which an identifier of the individual is to be disclosed) is a use of the information that complies with Schedule 1, Clause 10 (1) (f) of HRIPA or a disclosure of the information that complies with Schedule 1, Clause 11 (1) (f) or HRIPA.

## **PART 5 – IMPLEMENTATION OF THE PRIVACY MANAGEMENT PLAN**

### **Training Seminars/Induction**

All Council officials should be acquainted with the general provisions of the PPIPA, the HRIPA and in particular, the 12 IPPs the 15 HPPs, the Public Register provisions, the *Privacy Code of Practice for Local Government*, this Plan and any other applicable Code of Practice.

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

### **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 and the HRIPA, 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.

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
- 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 and health information.

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

- Whether the personal or health information is collected for a lawful purpose
- If that lawful purpose is directly related to a function of Council

- Whether or not the collection of that personal or health information is reasonably necessary for the specified purpose

Any further concerns of a legal nature will be referred to a legal specialist engaged by Council,

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, HRIPA or it may obtain and distribute copies of literature available from the IPC.

## **PART 6 – INTERNAL REVIEW**

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

Under Section 53 of the PPIPA a person (the applicant) who is aggrieved by the conduct of a Council is entitled to a review of that conduct. An application for internal review is to be made within 6 months of when the person first became aware of the conduct.

The application 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 application. The Reviewing Officer must be an employee and suitably qualified.

The review must be completed as soon as is reasonably practicable in the circumstances. If the review is not completed within 60 days of the lodgement, the applicant is entitled to seek external review.

The Council must notify the Privacy Commissioner of an application as soon as practicable after its receipt, keep the Commissioner informed of the progress of the application and inform the Commissioner of the findings of the review and of the action it proposes to take in relation to the application.

The Privacy Commissioner is entitled to make submissions in relation to internal reviews and the Council is required to consider any relevant material submitted by the Privacy Commissioner. The Council must provide the Privacy Commissioner with a draft of the Council's internal review report to enable the Privacy Commissioner to make a submission.

Council may provide a copy of any submission by Privacy Commissioner's to the applicant.

The Council must notify the applicant of the outcome of the review within 14 days of its determination. A copy of the final review should also be provided to the Privacy Commissioner where it departs from the draft review.

An internal review checklist has been prepared by the IPC and can be accessed from its website <http://www.ipc.nsw.gov.au>.

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

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

If the complainant remains unsatisfied, they may appeal to the NSW Civil and Administrative Tribunal (NCAT), which hears the matter afresh and may impose its own decision and can make a range of orders including an award of damages for a breach of an information protection principle or a health privacy principle.

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## PART 7 – OTHER RELEVANT MATTERS

### Mandatory Data Breach Scheme

In accordance with the MNDB Scheme established under Part 6A of the PPIPA, Council has in place a *Data Breach Policy* that sets out how Council will respond to a data breach that involves disclosure of personal information. The policy outlines the roles and responsibilities of Council officers in relation to managing a breach and the steps Council will follow if a breach occurs.

The *Data Breach Policy*, together with the *Cyber Crime and Security Incident Corporate Practice* and *Cybersecurity Incident Response Plan*, and related procedures, provides comprehensive guidance to Council officials on how to prevent, prepare for, identify, report, contain, evaluate and notify an eligible data breach.

### 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 or health 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 that 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 or health 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 or health information

The information practices relating to the collection, storage and use of personal or health information will be reviewed by the Council every three 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.

### Procedures, forms and other guidance

The Privacy Contact Officer will lead the development of appropriate procedures, forms, templates and other guidance material to assist the implementation of this Plan.

### Review

When 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. At a minimum, the Plan will be reviewed every four years.

### Further information

Council Contact: Manager Governance & Risk Ph 9911 9910.

The IPC can also provide assistance with understanding the processes under the PPIPA and HRIPA.