

6. CORPORATE MANAGEMENT

6.2 CORPORATE SPONSORSHIP

OBJECTIVE:

To provide principles for the negotiation and implementation of corporate sponsorship agreements.

POLICY:

General Principles

1. The General Manager, or an officer authorised by the General Manager, has the authority to seek and negotiate corporate sponsorship agreements.
2. Any consideration given to the establishment of sponsorship agreements shall have regard to the following:
 - (i) realistic servicing of the sponsorship by Council;
 - (ii) maintenance of a consistent and professional image of Council and the sponsor within the community at all times;
 - (iii) ICAC guidelines and sponsorship principles.
 - (iv) Will be considered with respect to public private partnership.
3. Sponsorship agreements are to be developed in line with Council's strategic planning and reflect unified and consistent themes.

Lithgow City Council will enter into negotiations with the view to executing written formal Sponsorship agreements with any company, partnership or sole trader who is reputable and whose public image, products and services are consistent with the values, goals and specific policies of the Council. Each project will be assessed on the individual merits of the sponsored project and the items to be sponsored

Recognition

Public and media recognition of Council's corporate sponsors will be negotiated with the sponsor and incorporated into a Corporate Sponsorship Agreement. The parties will execute a written formal contract and the contract will be the entire arrangement between the parties and no privileges for either party shall exist outside the concluded contract.

Sponsorship

- (i) The Sponsorship must not conflict or be seen to conflict with the objectives and policies of the Council;
- (ii) The Sponsorship should not impose or imply conditions that would limit the Council's ability to carry out its functions fully and impartially;
- (iii) The Sponsorship will not involve explicit endorsement of the sponsor or its products;
- (iv) The Sponsorship will not control or influence in any way any other dealings between the parties;
- (v) The Sponsorship may be terminated by the Council if any of the above situations occur. In particular:

Formatted: Font color: Auto

Formatted: Font: Not Italic

Formatted: Indent: Left: 0 cm, First line: 0 cm

Formatted: Font: Not Italic

Deleted: A

Formatted: Indent: Left: 0 cm, Hanging: 1 cm

Deleted: ¶

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0 cm, Hanging: 1 cm

Formatted: Bullets and Numbering

Deleted: B

Deleted: C

Formatted: Indent: Left: -0.05 cm, Tabs: Not at 1 cm

Formatted: Indent: Left: -0.05 cm, Tabs: Not at 2 cm

Deleted: PolicyCoporateSponsorship6_2V

Deleted: 2March2009Draft

- (a) If Council is asked to make a determination in respect of an application made to it by the Sponsor for approval under a statute which requires the exercise of Council's discretion then the Council will have the right to forthwith terminate the sponsorship agreement and no party shall be entitled to claim compensation. The Council may also seek appropriate independent advice on the merits of the application, whether it ought to be approved and, if so, on what conditions;
- (b) If Council is required to exercise its regulatory functions and serve a notice pursuant to a function on the sponsor the contract will be forthwith terminated without the right of either party to claim compensation.

Formatted: Indent: Left: 0.95 cm, Hanging: 0.95 cm, Tabs: Not at 3 cm

Maintained by Department:	Executive	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	6.2	Effective Date:	16/10/2006
Min No:	V1 - 06-349 V2 -	Version No:	2	Reviewed Date:	Oct 2007 - June 2013
Attachments:					

Deleted: 1

Deleted: PolicyCoprporateSponsorship6_2V

Deleted: 2March2009Draft



9. GOVERNANCE

Policy 9.4

COMPETITIVE NEUTRALITY

Version 3

9. GOVERNANCE

9.4 COMPETITIVE NEUTRALITY

OBJECTIVE: To ensure Council deals with complaints regarding competitive neutrality in an efficient manner.

POLICY:

INTRODUCTION

In April 1995, the Council of Australian Governments (COAG) ratified the National Competition Policy. The Policy is aimed at increasing consumer and business choice, reducing production and transportation costs in an effort to lower prices for goods and services, and creating an overall business environment in which to improve Australia's international competitiveness.

One of the major components of the National Competition Policy is the principles contained in the *Competition Principles Agreement*. The Agreement is aimed at encouraging, efficient public sector (government) service provision by exposing public (government) business functions to competition, where appropriate. The Agreement provides a policy framework that facilitates the creation of competitive markets for public sector goods and services, where appropriate.

The Competition Principles Agreement requires the creation of an effective regime to deal with complaints that Council business activities are not competing in the market against private businesses on a "level playing field" and are operating with competitive advantage.

This document constitutes a formal mechanism established by Lithgow City Council for the handling and management of competitive neutrality complaints. By establishing clear guidelines and procedures for the handling and management of competitive neutrality complaints, the Council will be in stronger position to ensure:

- non regulatory service functions operate under similar competitive pressures to those experienced by the private sector; and
- Services provided are relevant, cost effective and operationally efficient.

This document has a threefold purpose.

- Firstly, it may be used by members of the public and the owners of businesses competing in the same market as Lithgow City Council to submit complaints to the Council alleging that the Council is operating with net competitive advantages as a result of the Council's ownership of a business activity or service.
- Secondly, it will provide a formal mechanism for the investigation, determination and advice of the outcome of a complainant alleging that non regulatory service functions discharged or business activities operated by the Council are operating with competitive advantage over other private businesses.
- Thirdly, it will serve to ensure that Council staff continuously monitor non regulatory services provided by the Council operate under the principles of Competitive Neutrality.

THE COMPETITIVE NEUTRALITY PRINCIPLE

Competitive neutrality is one of the principles of National Competition Policy which is applied throughout Australia at all levels of Government, including Local Government. Competitive neutrality is based on the concept of a “level playing field” for competitors in a market, be they public or private sector competitors. Government business organisations, whether they are Commonwealth, State or Local Government, should operate without net competitive advantages over businesses as a result of their public ownership.

Where Lithgow City Council competes in the market place with other private businesses, the Council will do so on the basis that it does not utilise its public position to gain an unfair advantage over private businesses who may be in competition with the Council.

WHAT IS A COMPETITIVE NEUTRALITY COMPLAINT?

A complaint regarding competitive neutrality **IS**:

- A complaint Lithgow City Council has not met its requirements under the National Competition Policy Statement of Pricing and Costing for Council Businesses - a Guide to Competitive Neutrality and includes concern that the Council has not established an effective Competitive Neutrality Complaints Management System.
- A complaint that Lithgow City Council has not abided by the spirit of competitive neutrality in the conduct of Council business activities.

A competitive neutrality complaint is **NOT**:

- A complaint regarding the level of service provided by a business activity such as water quality inadequate, a mobile garbage bin not collected or the condition of a road or footpath.
- A complaint regarding the cost of the service, unless it is that Lithgow City Council has not costed the service the service to take competitive neutrality into account.
- A complaint regarding the trade practices laws and their application to the Lithgow City Council.

COUNCIL BUSINESS ACTIVITIES SUBJECT TO COMPETITIVE NEUTRALITY

Category 1 Business Activities

The following Lithgow City Council owned and operated activities have been categorised as *Category 1 Businesses* and are subject to competitive neutrality. Each business activity has an annual gross operating income over \$2M per year.

- Water
- Sewerage

Council has adopted the following attributes in respect of Category 1 Business Activities:

- A Corporatisation Model
- Full cost attribution including:
 - tax equivalent regime payments
 - debt guarantee fees, where the business benefits from Council's borrowing position by comparison with commercial rates
 - return on capital invested
- Identified any subsidies paid to the business
- Operate within the same regulatory framework as private businesses

HOW TO LODGE A COMPETITIVE NEUTRALITY COMPLAINT

A competitive neutrality complaint should be made in writing using a standard form available for that specific purpose from the Customer Service Centre at the Lithgow City Council Administrative Headquarters, 180 Mort Street Lithgow.

Complaints may also be made over the counter and by telephone. Council's Public Officer will provide advice and assistance with the preparation and submission of competitive neutrality complaints.

1. Time Limits

Competitive neutrality complaints will be acknowledged within 7 days and responded to by Lithgow City Council within 30 days of the date of submission of the complaint.

If the competitive neutrality complaint requires detailed investigation, the complainant will be informed of progress at regular intervals.

2. Remedies

Competitive neutrality complaints which establish that Lithgow City Council:

- (i) has not met its requirements under the National Competition Policy Statement or *Pricing and Costing for Council Businesses - a Guide to Competitive Neutrality*;

OR

- (ii) has not abided by the spirit of competitive neutrality in the conduct of Council business activities,

will result in changes to the Council's business practice to ensure future and continued compliance with the principle of competitive neutrality.

3. Alternatives

Any complainant dissatisfied with Lithgow City Council's determination of a competitive neutrality complaint may refer the complaint to either the:

- NSW Department of Local Government; or
- NSW Ombudsman; or
- NSW Independent Commission Against Corruption (ICAC); or
- Australian Competition and Consumer Commission (ACCC).

Alternatively, the competitive neutrality complaint may be referred direct to one of these agencies and Lithgow City Council bypassed.

WHO WILL BE DEALING WITH THE COMPETITIVE NEUTRALITY COMPLAINT?

The Lithgow City Council Public Officer will diligently, fairly and honestly investigate all competitive neutrality complaints. The Public Officer will submit an investigation report to the Council's General Manager within 21 days of the competitive neutrality complaint being received. Where the complaint is justified, such report will contain recommendations for changes to the Council's business activities practice to ensure future and continued compliance with the principle of competitive neutrality.

A response to the competitive neutrality complaint will be provided by the General Manager within 30 days of the date of submission of the complaint.

The Public Officer performs a role which is independent and separated from the management and control of Council business activities.

CONFIDENTIALITY

All competitive neutrality complaints received will be determined by the Council in the strictest confidence.

FURTHER INFORMATION

Further information or advice may be obtained by contacting the Lithgow City Council Public Officer between 8.15 am and 4.30 pm on telephone (02) 6354 9999. All enquiries or requests for further information will be maintained in the strictest confidence.

Maintained by Department:	Operations	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	9.4	Effective Date:	XX/XX/XX
Min No:	V1 - 06-349 V2 - 008-165 V3 - TBA	Version No:	3	Review Date:	Oct 2009 Jul 2013
Attachments:					



9. GOVERNANCE

Policy 9.12

RECORDS MANAGEMENT POLICY

Version 4

9. GOVERNANCE

9.12 RECORDS MANAGEMENT POLICY

OBJECTIVES:

- To establish the framework for, and accountabilities of, Lithgow City Council's Records Management program;
- To ensure compliance with relevant legislative requirements.

RELATED REFERENCES, POLICIES & PROCEDURES

Lithgow City Council's:

- Records Strategic Plan
- Access to Information Held Policy 9.17
- Various Recordkeeping Standard Working Procedures/SWPs
- Code of Conduct
- ECM End User Manual & ECM Key User Manual
- ECM Procedures
- Legal Documents Manual
- Appendices A & B

AUTHORITY OF THIS POLICY

This policy has been authorised by Council and is available to all staff. It has been developed in consultation with staff and will be revised as required and at a minimum at least once during the term of Council. Ownership of the policy rests with the Corporate Records Manager who is the senior officer in Council's Records Department and is responsible for Council's Records Management Program, ensuring compliance with legislative requirements and recordkeeping standards.

All staff must comply with this policy, and associated Records Management Procedures, in their conduct of official business for Council. This policy applies to records in all formats, including electronic records.

RECORDS AS A RESOURCE

Lithgow City Council recognises that records are a vital asset to:

- facilitate information accessibility, and enhance business by supporting program delivery, management and administration
- deliver customer service in an efficient, fair and equitable manner
- provide evidence of actions and decisions and precedents for future decision making, and
- protect the rights and interests of Government, Council and its clients and citizens.

A small percentage of Council's records will become archives, part of the cultural resources of the State.

PROCEDURE:

1. GENERAL

RECORDS MANAGEMENT PROGRAM

OBJECTIVES OF THE RECORDS MANAGEMENT PROGRAM

A records management program is a planned, co-ordinated set of policies, procedures, people, systems and activities that are required to manage records.

Lithgow City Council's Records Management Program seeks to ensure that:

- it has the records it needs to support and enhance ongoing business and customer service, meet accountability requirements and community expectations
- these records are managed efficiently and can be easily accessed and used for as long as they are required
- records are stored as cost-effectively as possible and, when no longer required, they are disposed of in a timely and efficient manner
- all staff are educated on their responsibilities under legislation and Government directives.
- this policy applies across a number of corporate systems (e.g. those used for storing property and finance information) and to information in applications such as email and faxes. The changing nature of the corporate information systems requires the ability to deliver records management in an adaptive manner.
- as a significant part of Lithgow City Council's corporate memory, records enable informed decisions based on precedents and organisational experience. Records management principles support consistency, efficiency and productivity in program delivery, management and administration.
- the Council is committed to managing its records effectively and efficiently to promote informed decision-making, better performance of business activities, improved customer service, and protection and support in litigation and management of risk.
- Council complies with all requirements concerning records and records management practices including the NSW Government's objectives for recordkeeping (see Appendix A)
- records of longer term value are identified and protected for historical and other research.

A goal of particular note is that the organisation is committed, through its Records Management Program, to maintaining digital and other technology dependent records in authentic and accessible form for as long as they are required in accordance with s.14 of the State Records Act 1998 (NSW).

ELEMENTS OF THE RECORDS MANAGEMENT PROGRAM

Creation and Capture

Council has endorsed the use of a number of standard, open source file formats outlined in the ECM End User Manual. These formats have been chosen to streamline the ongoing management of the Council's records and should be the only formats used for the creation of records.

Staff should ensure that they create official records of all decisions and actions made in the course of their official business. For example, if business is transacted by telephone, file notes of the key points in the conversation should be documented. Official meetings should include the taking of minutes.

To assist in promoting the responsible creation of records, the capture of essential information and the management of records over time, Council has developed the following:

- paper and electronic templates
- definition of recordkeeping requirements and business rules
- procedures, standard creation rules & other guidelines

All records defined by the organisation as important to create should be captured into ECM, Council's electronic recordkeeping system, so they can be managed appropriately. The information required to be recorded about each record on capture is described in the *ECM Key User Manual*.

Records are registered in ECM and automatically assigned a unique number. They are indexed to the relevant subject/s and the document is given a meaningful précis.

Storage

Current hardcopy records scanned in ECM are filed in day boxes and stored in the Records Office while older hard copy ECM records are stored in the locked Archives Room in day boxes. Other current hard copy records are filed on Personnel Files & Development Application, Building Application & Septic Tank Application Files.

Digital records should be stored and maintained in ECM until they can be disposed of. Records of short term value will be disposed of regularly by the Records Control Officer. Records of long term or archival value should be retained online wherever possible and managed in accordance with the *Records Management Procedures*.

Removable media should be forwarded to the Records Control Officer when rarely or no longer used for official purposes.

Maintenance and Monitoring

The location of each record needs to be recorded and updated at every movement of the record. This ensures that records, as assets, can be accounted for in the same way that the other assets of Council are. Staff members should notify a Records Administrator when passing hard copy files on to another officer.

The Records Control Officer is responsible for ensuring that records and environmental conditions are monitored regularly to protect records. This will include checking temperature and humidity levels in dedicated records storage areas for paper records and ensuring that digital records are refreshed or replicated when scheduled, when new storage devices and media are being installed or when degradation is detected.

Maintenance of digital records can also entail the migration of data. Migrations must be authorised by the Corporate Records Manager and must produce authentic, complete, accessible and useable records. For more information on procedures for migration, see the State Records NSW *General Retention and Disposal Authority – Source Records that have been Migrated*.

Council has implemented a number of security and counter disaster measures for safeguarding its information assets. Staff should abide by these measures at all times.

Disposal

Council has an authorised Retention and Disposal Authority (GA 39 - *General Authority for Local Government*) covering records relating to its core functions and activities. Council recommends that disposal actions are assigned to records in all formats on creation to ensure they are managed appropriately.

No Council records can be disposed of unless in accordance with GA 39. Any sentencing of records must be supervised by the Records Control Officer. Approval and signed authorisation for destruction of records must be sought from the General Manager before any disposal takes place.

Transfer

The transfer of records required as State archives in GA 39 to State Records NSW when no longer in use for official purposes will be managed by the Records Control Officer.

In the event of administrative change, e.g. the transfer of functions from Council to another organisation, the Records Control Officer will advise staff on transfer procedures for records.

Access

Records must be available to all authorised staff that require access to them for business purposes.

All access to Council's records by members of the public, including Government Information (Public Access) or GIPA requests, will be in accordance with Lithgow City Council's Policy 9.17 - Access to Information Held and State Records Access Directions.

Contractors and Outsourced Functions

All records created by contractors performing work on behalf of Council belong to Council and are State records under the *State Records Act 1998 (NSW)*. This includes the records of contract staff working on the premises as well as external service providers.

Contracts should clearly state that ownership of records resides with Council, and instructions regarding creation, management, and access to the records created. The Corporate Records Manager should be consulted during the formulation of the contract.

2. ACCOUNTABILITY REQUIREMENTS

- Lithgow City Council records are *state records*.
- The requirements and regulations of the State Records Act 1998 (NSW), which set out specific practices with which we must comply and will be audited against, bind Council.
- Other standards and legislation, such as the Evidence Act 1995, Government Information Public Access Act 2009 (commonly referred to as the GIPA Act), etc, will be complied with.
- A corporate standard will be set for records management that can be monitored and audited throughout Council that complies with AS ISO 15489 – Records Management.

3. RESPONSIBILITIES

GENERAL MANAGER

- Ensures that Council complies with the requirements of the State Records Act 1998 (NSW) and the standards and requirements issued under the Act. This includes the requirement for the public office to ensure that any records requiring technology to be read and understood remain readable and available for as long as they are required.
- Authorises disposal of records, in accordance with legislation.

FINANCE MANAGER

- Ensures the overall management of the Records Department
- Ensures that Council complies with the State Records Act 1998 (NSW) and other legislation relating to records management and recordkeeping
- Ensures that Records Management is adequately resourced
- Reports to the Executive on Records Management

COUNCILLORS

- All Councillors must comply with the Records Management for Councillors Standard Working Procedure in their conduct of official business for Council. Official business includes business relevant to the performance of the function and duties of the office of Councillor. The Standard Working Procedure applies to records in all formats, including electronic records.

CORPORATE RECORDS MANAGER / RECORDS CONTROL OFFICER

- Holds the role of Nominated Senior Officer for records management matters, including responding to requests for information on conformity with legislative requirements (i.e. responding to State Records records management surveys)
- Has ownership of the Records Management Policy
- Has responsibility for the conduct of records management operations
- Ensures the preservation of digital records is addressed in policy, planning and implementation of the public office's records management program
- In liaison with the IT Manager, ensures that the essential characteristics of digital records are identified prior to any preservation process taking place
- Ensures levels of service for the Records Unit are met & maintained
- Reports to the Finance Manager on Records Management
- Develops strategic and operational plans for the Records Management Program
- Provides support and infrastructure to ensure that records kept in electronic form are managed so that they are accessible, readable, inviolate, complete, comprehensive, and authentic for as long as required
- Ensures that information management policies and projects take into account the special nature of records
- Provides strategic focus for recordkeeping and monitors/audits compliance with records management standards
- In conjunction with IT staff, establishes and maintains a customised recordkeeping metadata schema and business rules regarding how metadata is to be managed
- Organises the disposal of records, in liaison with relevant authorising manager
- Collaborates with staff to meet common business objectives
- Formulates and maintains vital records lists and counter disaster plans
- When necessary, coordinates & delivers the records management training program
- When necessary, maintains ECM administration security
- Assists other Records officers as workload and/or special projects dictate

RECORDS SECURITY ADMINISTRATOR

- Assists in developing policies, procedures, plans & standards in relation to all aspects of records management
- Assists in monitoring compliance with the Records Management Policy, Procedures & standards across Council and makes recommendations for improvement or modification of practices
- Maintains & manages Council's Electronic Document & Records Management System (EDRMS), ECM.
- Ensures that all staff are aware of their recordkeeping responsibilities
- Coordinates & delivers the records management training program
- Maintains GA 39 specifically for Lithgow City Council
- Maintains ECM administration security
- Maintains Council's Legal Documents
- Ensures levels of service for the Records Unit are met & maintained
- Assists in providing recordkeeping reports as requested by management
- Assists in undertaking disposal of corporate records, including documentation
- Assists other Records officers as workload and/or special projects dictate
- When required, undertakes position of Corporate Records Manager

RECORDS ADMINISTRATOR

- Maintains Council's Electronic Document & Records Management System (EDRMS), ECM.
- Supports and contributes to the efficient and effective provision of consistently high quality records information management services, in the capture, maintenance, storage and distribution of records in a timely, confidential and accurate manner.
- Assists other Records officers as workload and/or special projects dictate

MANAGERS

- Ensure that records are created and managed within their program in a way which complies with the Records Management Policy and Procedures.
- Provide feedback on the successful migration processes to help ensure that records remain authentic, complete, accessible and useable
- Ensure that staff are trained in how to create and manage records
- Determine legislative requirements for records relating to their specific activities. E.g. Environmental Planning & Assessment Act 1979, Food Act 2003, etc.
- Ensure that contracts with service providers contain records management clauses in accordance with this Records Management Policy

IT STAFF

- Network management
- Management of Council's recordkeeping systems to ensure Council can deliver its programmed activities in an optimal manner
- Manages data integrity management including back ups and internal audit procedures
- Maintenance of Council's hardware ensuring it meets all of Council's recordkeeping needs
- Management, maintenance and control of all peripherals (printers, scanners, photocopiers)
- Management and optimisation of remote access to improve performance and timeliness of officers working external to main administration building

ALL STAFF

- Comply with Records Management Policy and Procedures
- Create full and accurate records of their business activities, including records of all decisions and actions made in the course of their official business
- Ensure that all records are saved into the organisation's business recordkeeping systems. (e.g. ECM, GIS, TI Property, T1 Financials,)
- Prioritise and complete allocated recordkeeping activities

CONTRACTORS

- Manage records that they create on behalf of Council according to the terms of their contract

REVIEW

This Policy will be reviewed as required and at a minimum at least once during the term of Council.

Maintained by Department:	Finance				
Reference:	ECM Policy Register	Council Date:		Effective Date:	17/12/12
Min No:	V1:Min 06-349 V2:Min 07-542 V3:Min O 08-165 V4:Min 13-132	Version No:	4	Reviewed Date:	April 2013 August 2013
Attachments:	Nil				

APPENDIX A

Legislative and Government Requirements for Recordkeeping

- State Records Act 1998 (NSW) – including standards and retention and disposal authorities issued under the Act
- Government Information (Public Access) Act 2009
- Privacy and Protection of Personal Information Act 1998
- Evidence Act 1995
- Electronic Transactions Act 2000
- Environmental Planning & Assessment Act 1979
- Local Government Act 1993
- Public Sector Employment and Management Act 2002
- Public Finance and Audit Act, 1983
- Commonwealth Copyright Act 1968
- NSW Public Sector Code of Conduct
- NSW Treasurer's Directions
- Good Conduct and Administrative Practice: Guidelines for Public Authorities and Officials (NSW Ombudsman)
- Premier's Memoranda and Circulars, including M1998-16, C2003-17, M2004-14, M2007-08

Note: This list is not exhaustive. It is the responsibility of managers to examine legislation and government directions which govern their activities, and ensure that records arising from these activities conform with recordkeeping requirements.

APPENDIX B – GLOSSARY OF TERMS

This glossary has been compiled from the *State Records Glossary of Recordkeeping Terms*. Sources of terms include Australian and international standards on records management.

Access

Right, opportunity, means of finding, using or retrieving information. *AS ISO 15489 Part 1 Clause 3.1*

Appraisal

The process of evaluating business activities to determine which records need to be captured and how long the records need to be kept, to meet business needs, the requirements of organisational accountability and community expectations. *AS 4390 Part 1 Clause 4.3*

Archives

Those records that are appraised as having continuing value. *AS 4390 Part 1 Clause 4.5*

Classification

Systematic identification and arrangement of business activities and/or records into categories according to logically structured conventions, methods and procedural rules represented in a classification system. *AS ISO 15489 Part 1 Clause 3.5*

Counter Disaster Plan

A plan for measures to be taken for disaster prevention, disaster response and recovery and vital records protection.

Disposal

A range of processes associated with implementing appraisal decisions. These include the retention, deletion or destruction of records in or from recordkeeping systems. They may also include the migration or transmission of records between recordkeeping systems, and the transfer of custody or ownership of records. *AS 4390 Part 1 Clause 4.9*

Recordkeeping

Making and maintaining complete, accurate and reliable evidence of business transactions in the form of recorded information. *AS 4390 Part 1 Clause 4.19*

Recordkeeping Requirements

Requirements arising from regulatory sources, business needs and community expectations that identify the types of records that should be created and the management framework needed in order to have, and accountably manage, all the business information that is necessary for an organisation.

Recordkeeping Systems

Recordkeeping systems are business information systems capable of capturing, maintaining and providing access to records over time.

Records

Information created, received, and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business. *AS ISO 15489 Part 1 Clause 3.15*

Any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means. State Records Act 1998 (NSW)

Records Management

Field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records. *AS ISO 15489 Part 1 Clause 3.16*

Records Management Program

A records management program encompasses the management framework, the people and the systems required within an organisation to manage full and accurate records over time. This includes the identification and protection of records with longer-term value that may be required as State archives.

Retention and Disposal Authority

Documents authorised by the Board of State Records NSW that set out appropriate retention periods for classes of records. There are two main types:

- **Functional retention and disposal authorities** authorise the retention and disposal of records unique to a specific organisation.
- **General retention and disposal authorities** authorise the retention and disposal of records common to more than one organisation. Such records may include general administrative records, common records that relate to unique functions and records relating to the unique functions of like organisations such as local councils, universities and public health services.

State Archive

A State record that State Records Authority NSW has control of under the State Records Act, 1998 (NSW).

Vital Records

Those records that are essential for the ongoing business of an agency, and without which the agency could not continue to function effectively. The identification and protection of such records is a primary object of records management and disaster planning. Ellis (ed), *Keeping Archives*, p. 480.

'© State of New South Wales through State Records NSW'



Deleted: <sp>

9. GOVERNANCE

Policy 9.13

PUBLIC INTEREST, DISCLOSURES POLICY

Deleted: ¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
¶
LITHGOW CITY COUNCIL¶
¶

Deleted: PROTECTED

Version ~~4~~

Deleted: 2

9. GOVERNANCE

9.13 PROTECTED DISCLOSURES POLICY

Formatted: Font color: Auto

OBJECTIVE:

Formatted: Font: Not Italic

To provide appropriate avenue to report and investigate claims of corrupt conduct, maladministration or serious and substantial waste.

Formatted: Indent: Left: 0 cm, First line: 0 cm, Tabs: Not at 2.86 cm

RELATED POLICY/ SWP/ LEGISLATION/ STANDARD IMPLICATIONS:

Deleted: s

Code of Conduct

Deleted: for the

Public Interest Disclosures Act 1994

Deleted: ing

Independent Commission Against Corruption Act 1988

Deleted: ion

Policy 9.3 Business Ethics

Deleted: of

Formatted: Font: Bold

Formatted: Font: Not Bold

POLICY:

Formatted: Font: Not Italic

1. GUIDELINES

Deleted: SUPPORT FOR PERSONS WHO MAKE DISCLOSURES

To establish an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Council, its staff and councillors. The system enables such internal disclosures to be made to the Mayor or General Manager.

Deleted: PURPOSE OF THIS POLICY¶

This policy is designed to complement normal communication channels between supervisors and staff.

¶

Staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this Policy.

¶

Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

This Policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Council, its staff and councillors. The system enables such internal disclosures to be made to the Mayor or to the General Manager.¶

Council is committed to the aims and objectives of the Protected Disclosures Act 1994. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff or councillors which disclose corrupt conduct, maladministration or serious and substantial waste of public money.

This policy is designed to complement normal communication channels between supervisors and staff. ¶

Council will take all reasonable steps to provide protection to staff and councillors who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

¶

Staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this Policy.¶

¶

OBJECT OF THE ACT

The purpose of the Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals and that the matters raised in the disclosures are properly investigated.

¶

¶

¶

Deleted: The Protected Disclosures Act 1995 commenced operation on 1 March 1995. The purpose of the Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals and that the matters raised in the disclosures are properly investigated.

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

The Act aims to encourage and facilitate the disclosure – in the public interest – of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

Deleted: ¶
¶

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm

DEFINITIONS

Three key concepts in the internal reporting system are “**corrupt conduct**”, “**maladministration**” and “**serious and substantial waste of public money**”.

Definitions of these concepts are outlined below.

Corrupt Conduct

“**Corrupt conduct**” is defined in the *Independent Commission Against Corruption Act 1988 (Sections 8 and 9)*. The definition used in the Act is intentionally quite broad – corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

Corrupt conduct can take many forms i.e. taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are some examples.

Maladministration

“**Maladministration**” is defined in the *Protected Disclosures Act* as conduct that involves action or inaction of a **serious nature** that is:

- Contrary to law, or
- Unreasonable, unjust, oppressive or improperly discriminatory, or
- Based wholly or partly on improper motives (s11).

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm, Tabs: Not at 1.27 cm

The conduct covered by these terms includes:

- **contrary to law:**
 - a decision or action contrary to the law
 - a decision or action ultra vires (i.e. the decision-maker had no power to make the decision or to do the act)
 - a decision or action contrary to lawful and reasonable orders from persons or agencies with authority to make or give such orders
 - breach of natural justice or procedural fairness
 - unauthorised disclosure of confidential information

Formatted: Indent: Left: 0 cm, First line: 0 cm, Bulleted + Level: 1 + Aligned at: 0 cm + Tab after: 0.63 cm + Indent at: 0.63 cm, Tabs: 0.63 cm, Left

Deleted: – eg

Lithgow City Council [Policy 9_13 ProtectedDisclosure - Track Changes.docx](#)

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

- a decision or action included or affected by fraud.

Deleted: ¶

• **unreasonable:**

Deleted: – eg

- a decision or action inconsistent with adopted guidelines or policies or with a decision of action which involves similar facts or circumstances not justified by any evidence, or so unreasonable that no reasonable person could so decide or act (e.g. irrational)

Formatted: Indent: Left: 0.63 cm, Bulleted + Level: 1 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm, Tabs: 1.27 cm, List tab + Not at 2.54 cm + 4.38 cm

- an arbitrary, partial, unfair or inequitable decision or action

- a policy that is applied inflexibly and without regard to the merits of an individual case

- a decision or action that does not take into account all relevant considerations or that takes into account irrelevant considerations

- serious delays in making decisions or taking action

- failing to give notice of rights

- giving wrong, inaccurate or misleading advice leading to detriment

- failure to rectify identified mistakes, errors, oversights or improprieties

- failing to properly investigate.

• **unjust:**

Deleted: – eg

- a decision or action not justified by any evidence or that is unreasonable

Formatted: Indent: Left: 0.63 cm, Bulleted + Level: 1 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm, Tabs: 1.27 cm, List tab + Not at 1.9 cm + 2.54 cm

- a partial, unfair, inequitable or unconscionable decision or action

• **oppressive:**

Deleted: – eg

- an unconscionable decision or action

Formatted: Indent: Left: 0.63 cm, Bulleted + Level: 1 + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm, Tabs: Not at 2.54 cm

- where the means used are not reasonably proportional to the ends to be achieved

- an abuse of power, intimidation or harassment

• **improperly discriminatory:**

Deleted: – eg

- inconsistent application of laws, policies or practices when there is no reasonable, justifiable or appropriate reason to do so

Formatted: Indent: Left: 0.63 cm, Outline numbered + Level: 1 + Numbering Style: Bullet + Aligned at: 1.9 cm + Tab after: 2.54 cm + Indent at: 2.54 cm, Tabs: 1.27 cm, List tab + Not at 2.54 cm

- distinctions applied not authorised by law, or failure to make a distinction which is authorised or required by law

• **based wholly or partly on improper motives:**

Deleted: – eg

- a decision or action for a purpose other than that for which power conferred

Formatted: Indent: Left: 0.63 cm, Bulleted + Level: 1 + Aligned at: 2 cm + Tab after: 2.63 cm + Indent at: 2.63 cm, Tabs: 1.27 cm, List tab + Not at 2.63 cm

- a conflict of interest

- bad faith or dishonesty

- seeking or accepting gifts or benefits in connection with performance of official duties

- misusing public property, official services or facilities

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

Serious and Substantial Waste:

Formatted: Font: Not Italic

The term “*serious and substantial waste*” is not defined in the *Protected Disclosures Act*. The Auditor-General provides the following working definition:

Deleted: ¶

Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste.

The following delineation of the definition of serious and substantial waste may be of assistance to public officials and/or public authorities.

Types:

<i>Absolute</i>	<i>Serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example, \$200,000.</i>
<i>Systemic</i>	<i>The waste indicates a pattern which results from a system weakness within the public authority.</i>
<i>Material</i>	<i>The serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to effect a public authority's capacity to perform its primary functions.</i>
<i>Material By Nature No Amount</i>	<i>The serious and substantial waste may not be material in financial terms but may be significant by nature. That is it may be improper or inappropriate (alternatively, this type of waste may constitute “maladministration” as defined in the Protected Disclosures Act).</i>

Waste can take many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;
- too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;
- personnel being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment;
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm, Tabs: Not at 1.9 cm

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property;
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- purchasing practices where the lowest price is not obtained for comparable goods or services without adequate and appropriate justification.

Formatted: Indent: Left: 0 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm, Tabs: 0.63 cm, List tab + Not at 1.9 cm

WHAT DISCLOSURES ARE PROTECTED UNDER THE ACT

What disclosures are protected?

Disclosures are protected under the Act if they:

- are made:
 - in accordance with this Internal Reporting Policy; or
 - to the General Manager; or
 - to one of the investigating authorities nominated in the Act; and
- show or tend to show corrupt, maladministration, or serious and substantial waste of public money by Council or any of its staff or councillors; and
- are made voluntarily.

Formatted: Indent: Hanging: 1.9 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm

What disclosures are not protected?

A disclosure is not protected under the Act if it is made by a public official in the exercise of a duty imposed by or under an Act.

Protection is also not available for disclosures which:

- are made frivolously or vexatiously;
- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm, Tabs: Not at 1.9 cm

It is an offence to wilfully make a false or misleading statement when making a disclosure.

REPORTING UNDER THE INTERNAL REPORTING SYSTEM

The persons or positions to whom internal disclosures can be made in accordance with the Internal Reporting System (as shown on the attached diagram) are:

- the Disclosure Co-ordinator, Group Manager – Community and Corporate; or
- the General Manager; or

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm, Tabs: Not at 1.9 cm

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

- the Mayor (if the disclosure concerns or involves the General Manager or a councillor).

Notes
Where persons contemplating making a disclosure are concerned about publicly approaching the Mayor or the General manager they can ring the relevant official and request a meeting in a discreet location away from the workplace.
<ol style="list-style-type: none"> 1. A council officer who wishes to make a protected disclosure which involves a councillor may do so to the Mayor, the General Manager, or an investigating authority (ie. The Director-General of the Department of Local Government, ICAC, or Ombudsman). 2. A councillor who wishes to make a protected disclosure which involves another councillor may do so to the Mayor, the General Manager, or an investigating authority (ie, Director-General of the Department of Local Government, ICAC, or Ombudsman). 3. If the Mayor wishes to make a protected disclosure he or she may do so to the General Manager, or an investigating authority (ie, Director-General of the Department of Local Government, ICAC, or Ombudsman).

Formatted: Indent: Left: 0 cm, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm, Tabs: 0.63 cm, List tab + Not at 1.27 cm

ROLES AND RESPONSIBILITIES

This Internal Reporting Policy places responsibilities upon people at all levels within Council.

Employees

Employees are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this Policy.

All employees of Council have an important role to play in supporting those who have made legitimate disclosures. They may abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make protected disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

Disclosure Co-ordinator

The Disclosure Co-ordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures. The Disclosure Co-ordinator will:

- a. provide an alternative internal reporting channel to Nominated Disclosure Officers and to the General Manager;
- b. impartially assess each disclosure to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act;
 - whether the disclosure covers another agency and should therefore be referred to the principal officer of that agency;
 - the appropriate action to be taken in relation to the disclosure, for example -
 - no action/decline;

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm, Tabs: Not at 1.27 cm

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

- the appropriate person to take responsibility for dealing with the disclosure;
 - preliminary or informal investigation;
 - formal investigation;
 - prosecution or disciplinary action;
 - referral to an investigating authority for investigation or other appropriate action; or
 - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct).
- consult with the General Manager about all disclosures, other than where a disclosure concerns the General Manager;
 - be responsible for carrying out or co-ordinating any internal investigation arising out of a disclosure, subject to the direction of the General Manager;
 - report to the General Manager on the findings of any investigation and recommended remedial action;
 - take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, (where this is practical and reasonable) and persons the subject of the disclosures, are kept confidential;
 - support persons who make disclosures and actively protect them from victimisation, harassment or any other form of reprisal; and
 - report actual or suspected corrupt conduct to the General Manager in a timely manner to enable that officer to comply with the *ICAC Act*.

General Manager

Disclosures may be made direct to the General Manager. The General Manager will:

a. Impartially assess each disclosure to determine:

- whether the disclosure appears to be a protected disclosure within the meaning of the Act;
- whether the disclosure concerns another agency and should therefore be referred to the principal office of that agency;
- the appropriate action to be taken in relation to the disclosure, for e.g.:
 - no action/decline;
 - the appropriate person to take responsibility for dealing with the disclosure;
 - preliminary or informal investigation;
 - formal investigation;
 - prosecution or disciplinary action;
 - referral to an investigating authority for investigation or other appropriate action; or
 - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct).

Formatted: Indent: Left: 0.95 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 3.75 cm + Tab after: 4.38 cm + Indent at: 4.38 cm, Tabs: Not at 4.38 cm

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

- b. receive reports for the Disclosure Co-ordinator on the findings of any investigation and any recommendations for remedial action and determine what action should be taken;
- c. take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the persons the subject of disclosures, are kept confidential (where reasonable and practical);
- d. have primary responsibility for protecting staff who make disclosures, or provide information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal;
- e. be responsible for implementing organisational reform identified as necessary following investigation of a disclosure; and
- f. report criminal offences to the Police and actual or suspected corrupt conduct to ICAC (under s.11 of the *ICAC Act*).

The Mayor

The Mayor may receive internal disclosures from any member of staff of the council or any councillor concerning the General Manager or a councillor. The Mayor will:

- a. impartially assess each disclosure made to him/her about the General Manager or a councillor to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act;

Note: *In making this assessment the Mayor may seek guidance from: the General Manager (if appropriate) or an investigating authority (i.e. the Director General of DLG, the ICAC, or Ombudsman).*

- the appropriate course of action to be taken in relation to the disclosure (in consultation with the General Manager, if appropriate), for e.g.:
 - no action/decline;
 - the appropriate person to take responsibility for dealing with the disclosure;
 - preliminary or informal investigation;
 - formal investigation;
 - prosecution or disciplinary action;
 - referral to an investigating authority for investigation or other appropriate action; or
 - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);

- b. refer disclosures to the General Manager for appropriate action if they concern the council's administration, within the day to day responsibilities of the General Manager.
- c. take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person to it he subject of a disclosure, are kept confidential (where this is practical and reasonable).

Formatted: Indent: Left: 0 cm, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm, Tabs: 0.63 cm, List tab + Not at 1.27 cm

Formatted: Indent: Left: 0.63 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm, Tabs: Not at 1.9 cm

Formatted: Indent: Left: 0.32 cm, Bulleted + Level: 1 + Aligned at: 0.63 cm + Tab after: 1.27 cm + Indent at: 1.27 cm, Tabs: Not at 1.27 cm

Deleted: ¶
¶
¶

Deleted: ¶
¶

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

ALTERNATIVE AVENUES FOR DISCLOSURES

Alternative avenues available to staff and councillors for making a protected disclosure under the Act (other than by means of the internal reporting system created under this Policy), are as follows:

- a. To the General Manager; or
- b. To one of the investigating authorities under the Act (eg the Director-General of DLG, ICAC and Ombudsman);
- c. To a journalist or a member of Parliament (where the following pre-conditions apply):
 - the person making the disclosure to a journalist or member of Parliament must have already made substantially the same disclosure through the internal reporting system, or to the General Manager or an investigating authority in accordance with the Act;
 - the person making the disclosure must have reasonable grounds for believing that the disclosure is substantially true and the disclosure must in fact be substantially true; and
 - the investigating authority, public authority or officer to whom the matter was originally referred has –
 - decided not to investigate the matter; or
 - decided to investigate the matter but not completed the investigation within 6 months of the original disclosure; or
 - investigated the matter but not recommended any action in respect of the matter; or
 - failed to notify the person making the disclosure, within 6 months of the disclosure, of whether the matter is to be investigated.

Formatted: Indent: Left: 0 cm, Bulleted + Level: 3 + Aligned at: 3.49 cm + Tab after: 4.13 cm + Indent at: 4.13 cm, Tabs: 0.63 cm, List tab + Not at 4.13 cm

RIGHTS OF PERSONS THE SUBJECT OF DISCLOSURES

The rights of persons the subject of disclosures will also be protected. In this regard:

- a. the confidentiality of the identity of persons the subject of disclosures will be protected/maintained (where this is possible and reasonable);
- b. disclosures will be assessed and acted on impartially, fairly and reasonably;
- c. responsible officials who receive disclosures in accordance with this Policy are obliged to:
 - protect/maintain the confidentiality of the identity of persons the subject of the disclosures (where this is practical and reasonable);
 - assess disclosures impartially; and
 - act fairly to persons the subject of disclosures;
- d. disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of persons making protected disclosures and the persons the subject of disclosures (where this is practical and reasonable);

Formatted: Indent: Left: 0 cm, Hanging: 0.63 cm, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.27 cm + Tab after: 0 cm + Indent at: 2.52 cm, Tabs: 0.63 cm, List tab + Not at 0 cm

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

- e. where investigations other enquiries do not substantiate disclosures, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry, and the identity of persons the subject of the disclosures will be kept confidential, unless the persons the subject of the disclosures request otherwise;
- f. the persons the subject of disclosures (whether protected disclosures under the Act or otherwise) which are investigated by or on behalf of a council, have the right to:
 - be informed as to the substance of the allegations;
 - be informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation; and
 - be given a reasonable opportunity to put their case (either orally or in writing) to the persons carrying out the investigation for or on behalf of the council,
 before any decision/determination/report/memorandum/letter or the like is made;
- g. where the allegations in a disclosure have been investigated by or on behalf of a council, and the person the subject of the allegations is aware of the substance of the allegations, the substance of any adverse comment, or the fact of the investigation, he or she should be formally advised as to the outcome of the investigation, regardless of the outcome; and
- h. where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person the subject of the disclosure is entitled to the support of the council and its senior management (the nature of the support that would be reasonable and appropriate would depend on the circumstances of the case, but could include a public statement of support or a letter setting out the council's views that the allegations were either clearly wrong or unsubstantiated).

Formatted: Indent: Left: 0 cm, Hanging: 0.63 cm, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.27 cm + Tab after: 0 cm + Indent at: 2.52 cm

PROTECTION AVAILABLE UNDER THE ACT

Protection against reprisals

The Act provides protection by imposing penalties on a person who takes "*detrimental action*" against another person substantially in reprisal for a protected disclosure. Penalties can be imposed by means of fines and imprisonment. "*Detrimental action*" means action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; or
- disciplinary proceeding.

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm, Tabs: Not at 1.9 cm

Any member of staff or councillor who believes that "*detrimental action*" is being taken against them substantially in reprisal for the making of an internal disclosure in accordance with this Policy should immediately bring the allegations to the attention of the General Manager or Mayor (as appropriate).

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

Lithgow City Council [Policy 9_13 ProtectedDisclosure - Track Changes.docx](#)

If a member of staff or councillor who made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact the Director-General of DLG, the Ombudsman or ICAC.

If an external disclosure was made to an investigating authority, that body will either deal with the allegation or provide advice and guidance to the person concerned.

Protection against actions etc.

The Act provides that a person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure. This provision has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure by a public official.

A person who has made a protected disclosure has a defence of absolute privilege in proceedings for defamation.

A person who has made a protected disclosure is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality with respect to any information disclosed.

Confidentiality

The Act requires investigating authorities, public authorities and public officials to whom protected disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirement are where:

- the person consents in writing to the disclosure of that information; or
- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively; or disclosure is otherwise in the public interest.

Formatted: Indent: Left: 0 cm, Hanging: 0.95 cm, Bulleted + Level: 1 + Aligned at: 1.27 cm + Tab after: 1.9 cm + Indent at: 1.9 cm, Tabs: Not at 1.9 cm

Decisions about natural justice, effective investigation and public interest will be made by the General Manager or Mayor (as appropriate). In all cases the person who made the disclosure will be consulted before such a decision is made.

Note: If guidance is needed in relation to the requirements of natural justice, effective investigation and public interest, this may be sought from an investigating authority.

Deleted: ¶
¶

Freedom of information exemption

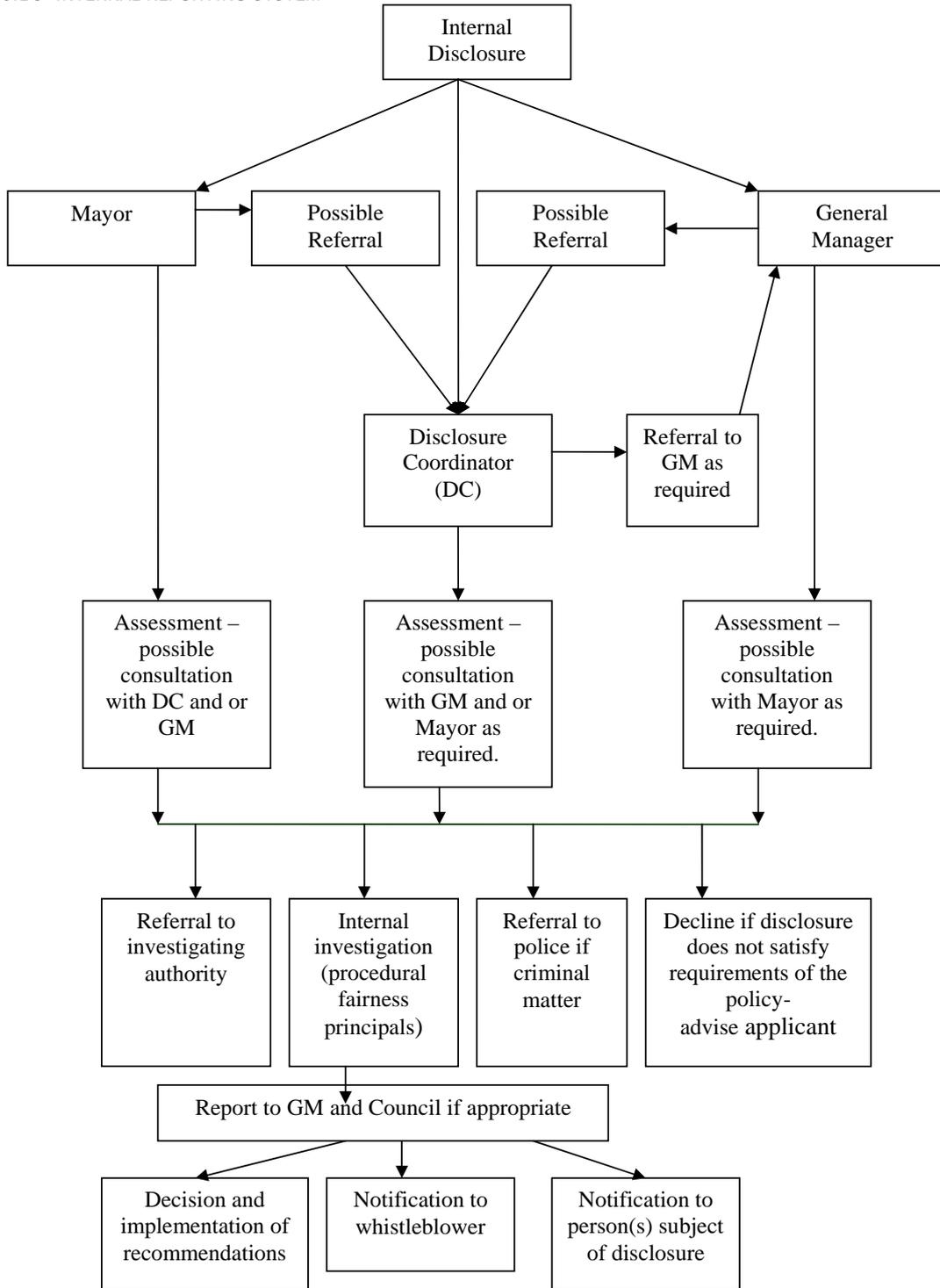
Under the Government Information Public Access Act 2009 a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the Act.

Deleted: ¶
¶

Deleted: Freedom of Information Act 1989

Deleted: Policy9_13Protected DisclosureV2Oct2008Final

COUNCIL'S INTERNAL REPORTING SYSTEM





9. GOVERNANCE

Policy 9.17

ACCESS TO INFORMATION HELD

Version 2

9. GOVERNANCE

9.17 ACCESS TO INFORMATION POLICY

OBJECTIVE:

The objective of this policy is to outline principles regarding access to information held by Council and to facilitate the processing of requests for such access by the public and Councillors.

POLICY:

Council is committed to the following principles regarding access to documents and information:

- a) Open and transparent government
- b) Consideration of the overriding public interest in relation to access requests
- c) Proactive disclosure and dissemination of information
- d) Respect for the privacy of individuals

1. COMMUNITY & COUNCILLOR AWARENESS:

Council publishes specific open access information on our website which is free of charge unless to do so would impose unreasonable additional costs to Council. A list of documents listed under the Government Information (Public Access) Act 2009 (GIPA Act), Schedule 1: Regulations are also published unless there is an overriding public interest not to do so.

Other information may also be publicly available if sought in an appropriate manner, and this is listed on our website under the GIPA Act disclosure log. Such information will be provided free of charge or at the lowest reasonable cost if photocopying or Council resources are required.

Councillors also have a right to access council information that is reasonably necessary for exercising the function of their civic office, including communicating Council policy and decisions to the community, exercising community leadership and representing the views of residents and ratepayers to Council.

2. BACKGROUND:

Applications for documents must be assessed in accordance with the Government Information (Public Access) Act 2009, in a timely manner and in accordance with the 'Access to Information Guidelines' and relevant legislation.

Depending on the nature of a request, and the form of access requested, charges may apply in accordance with Council's Schedule of Fees and Charges and relevant legislation.

Council's Principal Officer has delegated authority to a Right to Information Officer who will assess requests concerning Council's information and will assist the public and Councillors to gain access to information held by Council, determine applications requested and / or amend records in accordance with legislation.

Council will assess requests for access to information with reference to relevant legislation including:

- Government Information (Public Access) Act 2009
- Privacy and Personal Information Protection Act 1998
- Health Records and Information Privacy Act 2002
- State Records Act 1998
- Local Government Act 1993
- Environmental Planning and Assessment (EPA) Act 1979
- Companion Animals Act 1998

Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from operational needs may be refused on the grounds that such a diversion of resources is contrary to the public interest. Council will pursue ways to assist in defining the request to become more manageable and Council will endeavour to release alternate information that may sufficiently respond to the informal request.

Where information is released to an applicant under a formal access application, and Council considers that it will be of interest to other members of the public, the information may be provided for future inspection by the public and Councillors, free of charge.

The GIPA Act 2009 promotes openness, accountability and transparency, It allows Council to be proactive in providing information to the public and Councillors.

1. Accessing Information

The Right to Information Officer will deal with requests to inspect documents in accordance with the Government Information (Public Access) Act 2009 (GIPA Act) free of charge but reasonable photocopying fees may apply under the Act.

Council is governed by legislation that requires operations to be open and accountable, and to handle personal information in a fair and reasonable manner.

Council will ensure that legitimate requests for access to information are handled promptly and in a manner that enables members of the public and Councillors to access information which is in the public's interest. It is also recognised that privacy of others, legal and commercially sensitive information, will be handled in a responsible manner.

There is a right of access under the GIPA Act to certain documents held unless there is an overriding public interest not to do so. Any applications under GIPA Act will be processed in accordance with the Act's requirements and a determination made to release the documents or refuse access on the basis of relevant considerations under that Act. Charges for formal applications are in accordance with the fee determined by the GIPA Act.

Council will also provide access to information under the NSW Privacy and Personal Information Protection Act (PPIPA) 1998, and the NSW Health Records and Information Privacy Act (HRIPA) 2002.

An individual has the right to access and amend records held by Council which may contain their personal details, matters relating to their business affairs or their health.

If information held on individuals and is requested documents, files or systems should be made available. The GIPA Act provides for consultation with individuals or relevant third parties prior to the disclosure of information.

A Councillor may have an entitlement to information expressly included in the Model Code of Conduct for Local Councils in NSW (s 440 Local Government Act 1993). Clause 10 of the Model Code provides guidance on the requirement for an officer to provide information to Councillors. It states that Councillor must be provided with sufficient information to carry out their functions. As for an application under the GIPA Act the request must be in writing and determined in an appropriate timeframe as detailed in 5.

2. Open Access Information

Council publishes open access and mandatory releases information on its website unless there is an overriding public interest against disclosure or do so would impose an unreasonable additional cost on Council. Should costs be deemed unreasonable Council will make the information available to the applicant in another suitable format such as viewing a hard copy at the Administration Office.

Information identified as 'Open Access Information' and is available on Council's website includes:

- Council's policy documents;
- a publication guide with information about the Council's structure and functions, and listing the type of information that is publicly available;
- a disclosure log of formal access applications where in Council's opinion the information released may be of interest to other members of the public
- a register of contracts worth more than \$150,000 that Council has with private sector bodies
- a record of 'Open Access Information' that Council does not make publicly available on the basis of an overriding public interest against disclosure

In addition Schedule 1 of the GIPA Act Regulations certain documents held must be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website) or at the Administration Office of Council during normal office hours. Any current and previous versions of the documents may also be inspected by the public free of charge.

Copies may be supplied for reasonable copying charges as shown in Councils adopted Fees and Charges.

'Open' Informal Access documents are:

1. Information about Council
 - The model code prescribed under section 440 (1) of the LGA
 - Councils adopted Code of Conduct

- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report
- Management Plan
- EEO Management Plan
- Policy concerning the Payment of Expenses Incurred by, and the Provision of Facilities to, Councillors
- Annual Reports of Bodies Exercising Functions Delegated by Council
- Any Codes referred to in the LGA
- Returns of the Interests of Councillors, Designated Persons and Delegates
- Agendas and Business Papers for any meeting of Council or any Committee of Council
- Minutes of any meeting of Council or any Committee of Council
- Departmental Representative Reports presented at a meeting of Council
- Land Register
- Register of Investments
- Register of Delegations
- Register of Graffiti removal works
- Register of Current Declarations of Disclosures of Political Donations
- Register of Voting on Planning Matters

2. Plans and Policies

- Local Policies adopted by Council concerning approvals and orders
- Plans of Management for Community Land
- Environmental Planning Instruments, Development Control Plans and Contribution Plans

3. Information about Development Applications

Development Applications and any associated documents received in relation to proposed developments:

- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Submissions received on Development Applications
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultant Reports
- Records of decisions on Development Applications including decisions on appeals

- Records describing general nature of documents that Council decides to exclude from public view including internal specifications and configurations, and commercially sensitive information
4. Approvals, Orders and Other Documents
- Applications for approvals under part 7 of the LGA
 - Applications for approvals under any other Act and any associated documents received
 - Records of approvals granted or refused, any variation from Council Policies with reasons for the variation, and decisions made on appeals concerning approvals
 - Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
 - Orders given under the Authority of any other Act
 - Records of Building Certificates under the Environmental Planning and Assessment Act 1979
 - Plans of land proposed to be compulsorily acquired by Council
 - Compulsory Acquisition Notices
 - Leases and Licenses for use of Public Land classified as Community Land

Copies of documents provided to the public and Councillors are done so for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document and the copyright / owner's consent is required if any part of the document is used for any other purpose.

Council may include 'other' documents on the website which are frequently requested and deemed to be in the public's interest as a result of a previous request under the GIPA Act. Council will endeavour to release this information in response to an informal request, subject to any reasonable conditions as Council sees fit to impose. However, notwithstanding the lodgement of an informal application, Council may require an individual or Councillor to submit a formal access application for the information sought if the information:

- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or
- would involve an unreasonable amount of time and / or resources to produce

3. Exemptions to Access

Council may refuse a request for information if there is an overriding public interest against disclosure or if searching for the requested information would require unreasonable and substantial diversion of the Council's resources.

Council will always explain, to the applicant, being a member of the public or a Councillor, the reason / s for applying an exemption.

Council will not classify information as exempt unless there are clear reasons for doing so. If documents partly contain exempt information, this information will be withheld and the remaining information will be available under the Act.

In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.

The GIPA Act provides an exhaustive list of public interest considerations against disclosure. These are the only considerations against disclosure that Council will consider in applying the public interest test.

Considerations are grouped under the following headings:

- responsible and effective government
- law enforcement and security
- individual rights, judicial processes and natural justice
- business interests of agencies and other persons
- environment, culture, economy and general matters
- secrecy provisions (in legislation other than those listed in Schedule 1: Regulations)
- Exempt documents under Freedom of Information legislation in all Australian States except NSW

In applying the public interest test, Council will not take into account:

- that disclosure might cause embarrassment to, or loss of confidence in, the Council;
- that information disclosed might be misinterpreted or misunderstood by any person.

Council will consider any submissions made by an individual or a Councillor in relation to public interest considerations, as well as particulars personal to the applicant.

Under the GIPA Act there are 12 categories of information, 8 of which affect local government, for which there is a conclusive presumption of an overriding public interest against disclosure.

Local Government categories are:

1. Information subject to an overriding secrecy law (26 specifically named Acts)
2. Information subject to the direction or order of a court or other body with the power to receive evidence on oath
3. Information subject to legal professional privilege
4. 'Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee)
5. Documents affecting law enforcement and public safety.
6. Specific information relating to transport safety

7. Specific reports concerning the care and protection of children
8. Specific information relating to Aboriginal and environmental heritage.

Generally under the GIPA Act, Council cannot publish, and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.

In dealing with informal applications Council will apply a similar decision making framework.

3. Accessing Information

The public and Councillors may obtain access to information as follows:

- Council's website
- A written request to Council which will be determined and a reply provided as to whether the information requested:
 - is *open access*, or *mandatory release* information that is readily available and where and how to get the information
 - should be made available as part of a *proactive release* of information
 - can be disclosed through an *informal release*, for example where no third party personal information is involved
 - Requires a *formal access application*, accompanied by the required fee and photocopying charges.

To make an informal request for access to information Council will require the public and / or Councillors to complete an 'Informal Access to Information Request' form but no fee is required with this application.

To make a formal request for access to information, a 'Formal Access to Information' Request Form must be completed. The Formal Application fee is defined in the GIPA Act and does not include GST. Council will acknowledge receipt of formal access application within five working days.

If a fee for photocopy is required the applicant will be notified of the amount payable and this amount will include GST. Charges will be calculated as per Councils current Schedule of Fees and Charges, applicable at the time of lodgement of the application.

5. Time Limits

As stated in 4) Council will acknowledge receipt of formal access applications within five working days and further notify applicants of its decision within 20 working days that is unless the applicant agrees to extend the time.

Informal applications will be assessed within 20 working days.

Council may extend the time by up to 15 working days where consultation is required with a third party or if Council needs to retrieve records from archives.

If access is deferred by Council, then the applicant will be notified, provided a reason for the deferral and given the date that the access will be provided. A decision to defer access to formal applications is reviewable (see Rights of Review and Appeal).

If Council does not decide the applicant's formal access application within the above timeframe, it is deemed 'refused' and Council will refund the application fee and the applicant may seek an internal or external review (see Rights of Review and Appeal) of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

6. Rights of Review and Appeal

Where a member of the public or a Councillor is refused access of a formal application, the Right to Information Officer will provide details of the reasons for refusal to the applicant in writing. An applicant who has been refused access by Council to a formal access application has three options of review available:

1. Internal Review:

Applicants have 20 working days from the date they are notified that their original application has been refused to ask for an internal review.

A request for an internal review must be submitted to Council on a completed application form and payment of the appropriate fee under GIPA Act.

This review will be conducted by the Principal Officer

2. Review by the Information Commissioner

If an applicant is not satisfied with the internal review, or does not wish one to be conducted, they can ask for a review by the Information Commissioner.

Applicants have 8 weeks from the notification that their original application was refused to ask for a review.

3. Review by the Administrative Decisions Tribunal (ADT).

If an applicant is not satisfied with the decision of the Information Commissioner, or an internal review by Council, or they do not want to take these options they can apply to the Administrative Decisions Tribunal (ADT).

If the applicant has already had a review by the Information Commissioner they have 4 weeks from notification of the decision to make this application. If they haven't had a review by the Information Commissioner they have 8 weeks from notification of the decision to make this application.

There are no rights of review in respect of informal applications, but the applicant may wish to make a formal application to Council.

It should be noted that the NSW Ombudsman and the Division of Local Government also have a complaint handling procedures should issues arise.

Maintained by Department:	Corporate & Community	Approved by EMT:	10.01.11	Approved by CMT:	12.01.11
Reference:	Dataworks: Policy Register	Council Date:	24.01.11 (Draft)	Effective Date:	28 Oct 13
Min No:		Version No:	2	Reviewed Date:	Oct 13
Attachments:	Lithgow City Council: Publication Guide – Access to Information Held				



9. GOVERNANCE

Policy 9.18

MEDIA AND SOCIAL MEDIA POLICY

Version 2

9. GOVERNANCE

9.18 MEDIA AND SOCIAL MEDIA POLICY

1 OBJECTIVES:

- a) To provide a policy for the release of information relating to Council business through media outlets.
- b) To endorse Council's use of social media for the dissemination of information and to facilitate discussion as part of a community engagement strategy.
- c) To clearly identify authorised spokespersons on behalf of Council.
- d) To provide guidelines to those authorised spokespersons when making statements regarding Council business.

2 DEFINITIONS

Media

The term commonly given to various means of communication that reaches a broad cross-section of the community such as television, radio and newspaper.

Social media

The term commonly given to web-based tools that allow users to interact with each other in some way – by sharing information, opinions, knowledge and interests online. As the name implies, social media involves the building of online communities or networks to encourage participation and engagement.

This includes blogs, message boards, social networking websites (such as Facebook, twitter, LinkedIn, MySpace) content sharing websites (such as Flickr, YouTube) and many other similar online channels.

3 PURPOSE

The purpose of this policy is to inform the community of Lithgow City Council's use of media and social media platforms for the distribution of information and community consultation pertaining to the business of Council.

BACKGROUND

Lithgow City Council is committed to making the best use of all available media to improve communication with the public. This includes using all reasonable and cost-effective means to improve the way we communicate, reach out and interact with the different communities we serve.

Social media and the media are the Council's most important channels of communication with the community. They are effective mediums which the Council works with to provide factual and positive information on policies, initiatives, performances and achievements.

It is important that any potential risks are managed through a common-sense approach and framework as well as proactively monitoring the development of such applications.

It is important that the Council builds on its relationship with the media and the community and continues to issue timely, informative and interesting media releases and to provide other information as necessary.

It is also important that each media release and the distribution of information through social media is approved through the correct Council channels.

4 LEGISLATION

Actions and comments are governed by various legislative and Council requirements.

Councillors and staff members may expose themselves to legal action or sanctions under these requirements unless complying with this policy and relevant Standard Working Procedures.

The following legislation is applicable to this policy:

- Government Information (Public Access) Act 2009
- Freedom of Information Act, 1982 (Federal)
- Copyright Act 1968
- Defamation Act, NSW 1974
- Privacy Act, 1988
- Lithgow City Council policies
- Lithgow City Council Code of Conduct
- Workplace Surveillance Act.

5 AUTHORISED REPRESENTATIVES

Statements, relating to Council business, can be made to the media or via social media in the form of a media release or a comment by:

- (a) the Mayor (or Deputy Mayor in the Mayor's absence);
- (b) a Councillor nominated by the Mayor
- (c) the General Manager;
- (d) a staff member nominated by the General Manager.

Statements by authorised representatives will only relate to policies and resolutions adopted by the Council and other initiatives and activities the Council is involved with. Comments are to be made on behalf of the Council.

The Council's General Manager or authorised staff may provide information on the Council's operational matters and respond to specific inquiries on policy interpretation or guidelines. They may exercise discretion to determine the appropriateness of the response and where such matters should be referred to the Mayor or Council for endorsement of a policy. Authorised persons are entitled to decline comment.

These guidelines do not apply to personal Letters to the Editor, Councillors and employees are able to issue personal letters that make no reference to their relationship with Council if it is considered appropriate.

6. CONFIDENTIAL DOCUMENTS

Confidential information will not be released by Council via any form of media or social media.

Maintained by Department:	Corporate & Community	Approved by:	Council	Exhibition Date:	23/7/12
Reference:	Policy Register	Council Policy No:	9.18	Effective Date:	3/9/12
Min No:	12-328	Version No:	2	Reviewed Date:	July 2013
				Next Review Date:	July 2017
Attachments:					



9. GOVERNANCE

Policy 9.21

PRIVACY MANAGEMENT PLAN

Version 1

TABLE OF CONTENTS

PREFACE	
Part 1 – Introduction	
1.1 What is 'personal information'?	
1.2 What is not 'personal information'?	
1.3 Policy on Electoral Rolls	
1.4 Application of the Plan	
1.5 Personal Information held by Council	
1.6 Applications for suppression in relation to general information (not public registers)	
1.7 Caution as to unsolicited information	
Part 2 – Public Registers	
2.1 Public registers, the PPIPA and the HRIPA	
2.2 Effect on section 6 of the GIPA Act	
2.3 Where some information in the public register has been published	
2.4 Disclosure of personal information contained in the public registers	
2.5 Purposes of public registers	
2.6 Applications for access to won records on a public register	
2.7 Applications for suppression in relation to a public register	
2.8 Other registers	
Part 3 – The information Protection Principles	
Part 4 – Health Privacy Principles	
Part 5 – Implementation of the Privacy Management Plan	
5.1 Training Seminars/Induction	
5.2 Responsibilities of the Privacy Contact Officer	
5.3 Distribution of information to the public	
Part 6 – Internal Review	
6.1 How does the process of Internal Review operate?	
6.2 What happens after an Internal Review?	
Part 7 – Other Relevant Matters	
7.1 Contracts with consultants and other private contractors	
7.2 Confidentiality	
7.3 Misuse of personal or health information	
7.4 Regular review of the collection, storage and use of personal or health information	
7.5 Regular review of Privacy Management Plan	
7.6 Further Information	
Part 8 – Appendices	
Appendix 1: Statutory Declaration for access under Section 57 of the Privacy and Personal Information Protection Act 1998 to a Public Register held by Council	
Appendix 2: Privacy Notification Form – Section 10 (Pre-Collection).....	
Appendix 3: Privacy Notification Form – Section 10 (Post-Collection)	
Appendix 4: Application under Section 13 of the Privacy and Personal Information Protection Act 1998: To determine whether Council holds personal information about a person	
Appendix 5: Application under Section 14 of the Privacy and Personal Information Protection Act 1998: For access to Applicant's Personal Information	
Appendix 6: Application under section 15 of the and Personal Information Protection Act 1998: For alteration of Applicant's Personal Information	

PREFACE

The *Privacy and Personal Information Protection Act 1998* (the "PPIPA") requires all councils to prepare a Privacy Management Plan outlining their policies and practices to ensure compliance with the requirements of that Act and the *Health Records and Information Privacy Act 2002* (the HRIPA).

In particular, the object of this plan is to inform:

- The community about how their personal information will be used, stored and accessed after it is collected by the Council; and
- Council staff of their obligations in relation to handling personal information and when they can and cannot disclose, use or collect it.

PART 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 and the Health Records and Information Privacy Act 2002 ("HRIPA");
- 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.

PPIPA 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 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. To date there has been no Health Records and Information Privacy Code of Practice made for Local Government.

The Privacy 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 Codes or the Information Protection

Principles and the Health Privacy Principles as they apply to the Council;

- affect 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 and the HRIPA.

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 Codes.

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.

1.1 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.

1.2 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.

Section 4A of the PPIPA also specifically excludes "health information", as defined by section 6 of the HRIPA, from the definition of "personal information", but includes "health information" in the PPIPA's consideration of public registers (discussed below). "Health information" is considered in Part 4 of this Plan.

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 8 of the Government Information (Public Access) Act 2009 (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.

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

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

1.3 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.

1.4 APPLICATION OF THIS PLAN

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

- Councillors;
- Council employees;
- Consultants and contractors of the Council;
- Council owned businesses; and
- Council committees (including community members of those committees 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 the PPIPA, the HRIPA, any other applicable Privacy Code of Practice and this Plan.

1.5 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; and
- various types of health information (see page 33 for detailed examples).
- 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;
 - wage and salary entitlements; and
 - health information (such medical certificates and workers compensation claims).

1.6 APPLICATIONS FOR SUPPRESSION IN RELATION TO GENERAL INFORMATION (NOT PUBLIC REGISTERS).

Under section 739 of the Local Government Act 1993 (“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.

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.

1.7 CAUTION AS TO UNSOLICITED INFORMATION

Where an individual, a group or committee, not established by Council, gives Council unsolicited personal or health information, then that information should be still treated in accordance with this Plan, the Codes, the HRIPA and the PPIPA for the purposes of IPPs 5-12 and HPPs 5-15 which relate to storage, access, use and disclosure of information.

Note that for the purposes of section 10 of the HRIPA, the Council is not considered to have “collected” health information if the receipt of the information by the Council is unsolicited.

Section 4(5) of the PPIPA also provides that personal information is not “collected” by Council if it is unsolicited.

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 Privacy 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 Privacy 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 the 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.

2.1 PUBLIC REGISTERS, THE PPIPA AND THE HRIPA

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).

Despite the exclusion of “health information” from the definition of “personal information” under section 4A of the PPIPA, section 56A of the PPIPA *includes* as “personal information”, “health information” on public registers.

Section 57 of the PPIPA requires very stringent controls over the disclosure of personal information contained in a public register. It 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) provides that in order to ensure compliance with section 57(1), a Council may require 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 as a guide)

Councils also need to consider the Privacy Code of Practice for Local Government which has the effect of modifying the application of Part 6 of the PPIPA (the “public register” provisions).

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 or as health information for the purposes of part 6 of the PPIPA.

2.2 EFFECT ON SECTION 6 OF THE GIPA ACT

Section 57 of the PPIPA prevails over clause 1(3) of Schedule 1 of the Government Information (Public Access) Regulation 2009 (GIPA Regulation) to the extent of any inconsistency. Therefore:

1. If a register is listed in Schedule 1 of the GIPA Regulation, access must not be given except in accordance with section 57(1) of the PPIPA.
2. If a register is not listed in Schedule 1 of the GIPA Regulation, access must not be given except:
 - (i) if it is allowed under section 57(1) of the PPIPA; **and**
 - (ii) there is no overriding public interest against disclosure of the information under section 6 of the GIPA Act.

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

2.3 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.

2.4 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”.

2.5 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.

2.6 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.

2.7 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.

2.8 OTHER REGISTERS

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

PART 3 – THE INFORMATION PROTECTION PRINCIPLES

3.1 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 1989
- 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;
- 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;
- Government Information (Public Access) Act 2009;
- 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 fulfill 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.

3.2 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 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 2.

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 extends the operation of section 24(1) to councils and permits non-compliance with Information Protection Principle 2 if a council is:

- (i) 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; 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.

- (iii) 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.

3.3 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 2).

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 2); 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 be 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 3 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 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 3.

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 extends the operation of section 24(1) to councils and permits non-compliance with Information Protection Principle 3 if a council is:

- (i) 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; 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.

Disclosure of information of research purposes

The disclosure of personal information for research purposes will be allowed only in accordance with any applicable Direction made by the Privacy Commissioner under section 41 of PPIPA or any Research Code of Practice made by the Attorney General as may be in force for the time being.

3.4 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 the Office of the Privacy Commissioner NSW will be sought.

3.5 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.

Disclosure of information of research purposes

The disclosure of personal information for research purposes will be allowed only in accordance with any applicable Direction made by the Privacy Commissioner under

section 41 of PPIPA or any Research Code of Practice made by the Attorney General as may be in force for the time being.

3.6 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.

Under section 20(5) of the PPIPA, Information Protection Principle 6 is subject to any applicable conditions or limitations contained in the *Government Information (Public Access) Act 2009* ("GIPA Act"). Council must consider the relevant provisions of the GIPA Act.

Any person can make application to Council by completing the appropriate form and submitting it to Council. An example is at Appendix 4.

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 GIPA Act rates structure.

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 6.

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.

3.7 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 GIPA Act, 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 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, Information Protection Principle 7 is subject to any applicable conditions or limitations contained in the *Government Information (Public Access) Act 2009* (“GIPA Act”). Council must consider the relevant provisions of the GIPA Act.

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 Manager of Personnel, 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.

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 7.

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.

3.8 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.*

- (4) *This section, and any provision of privacy code of practice that relates to the requirements set out in this section, apply to public sector agencies despite section 25 of this Act and section 21 of the State Records Act 1998.*
- (5) *The Privacy Commissioner's guidelines under section 36 may make provision for or with respect to requests under this section, including the way in which such a request should be made and the time within which such a request should be dealt with.*
- (6) *In this section (and in any other provision of this Act in connection with the operation of this section), **public sector agency** includes a Minister and a Minister's personal staff.*

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 (*this includes by way of corrections, deletions or additions*) 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.

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 that are or could be the subject of a staff complaint or grievance, they will be referred to the Manager Personnel 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 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 8.

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 (either by way of correction, deletion or addition), the individual to whom the information relates, must make a request. 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.

3.9 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.

3.10 INFORMATION PROTECTION PRINCIPLE 10 - LIMITS ON USE OF PERSONAL INFORMATION

Section 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(a) to the use of the information for another purpose.

The form of consent should include the following elements:

<p>I, ⁽¹⁾</p> <p>Of, ⁽²⁾</p> <p>Hereby consent under section 17(a) of the Privacy and Personal Information Protection Act 1998 to ⁽³⁾</p> <p>.....</p> <p>Using the information collected from me by ⁽⁴⁾</p> <p>.....</p> <p>for the purpose of ⁽⁵⁾</p> <hr/> <p>Signature</p> <p>Name to be Printed</p> <p>Date Signed/...../.....</p>	<p>(1) Insert full name</p> <p>(2) Insert Address</p> <p>(3) Insert Council Name</p> <p>(4) Insert name of collecting body/person</p> <p>(5) Insert purpose/s info was collected for</p>
--	--

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 10.

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 extends the operation of section 24(2) to councils and permits non-compliance with Information Protection Principle 10 if a council is:

- (i) 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; and
- (ii) 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 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 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 (e.g., 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.

3.11 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

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 Information Protection Principle 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.

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 (e.g. the Division 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.

3.12 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, 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 or to a Commonwealth agency unless:*
 - (a) a relevant privacy law that applies to the personal information concerned is in force in the that jurisdiction or applies to that Commonwealth agency, 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 to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales and to Commonwealth agencies.*
- (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

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.

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 (e.g. the Division 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.

Model Privacy Management Plan for Local Government January 2013 35

PART 4 – HEALTH PRIVACY PRINCIPLES

In 2002, most references to 'health information' were taken out of the PPIPA and separate legislation was enacted. The HRIPA was enacted to deal with this specific type of personal information. On and from September 2004, various agencies and organisations, including local councils were expected to comply with the HRIPA in their collection and management of health information.

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; or
- genetic information that is or could be predictive of the health of an individual or their relatives or descendants.

Health information is defined in section 6 of the HRIPA. 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 ("HPP") 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 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 which may include recording information about a residents health, GP professional contact details or involvement with mental health services;
- Volunteer programs where volunteers are asked to disclose health conditions which 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; and
- Family counsellor/youth support workers records.

HPPs 1-4 concern the collection of health information, HPP 5 concerns the storage of health information, HPPs 6-9 concern the access and accuracy of health information, HPP 10 concerns the use of health information, HPP 11 concerns the disclosure of health information, HPPs 12-13 concern the identifiers and anonymity of the persons to which health information relate, HPPs 14-15 concern the transferral of health information and the linkage to health records across more than one organisation.

Health Privacy Principle 1

Purposes of collection of health information

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

Health Privacy Principle 2

Information must be relevant, not excessive, accurate and not intrusive

An organisation that collects health information from an individual 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 is 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.*

Health Privacy Principle 3

Collection to be from the individual concerned

- (1) *An organisation must collect health information about an individual only from that individual, unless it is unreasonable or impracticable to do so.*
- (2) *Health information is to be collected in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause.*

Health Privacy Principle 4

Individual to be made aware of certain matters

- (1) *An organisation that collects health information about an individual from the individual must, at or before the time it collects the information (or if that is not practicable, as soon as practicable after that time), take steps that are reasonable in the circumstances to ensure that the individual is aware of the following:*

- (a) *the identity of the organisation and how to contact it,*
 - (b) *the fact that the individual is able to request access to the information,*
 - (c) *the purposes for which the information is collected,*
 - (d) *the persons to whom (or the type of persons to whom) the organisation usually discloses information of that kind,*
 - (e) *any law that requires the particular information to be collected,*
 - (f) *the main consequences (if any) for the individual if all or part of the information is not provided.*
- (2) *If the organisation collects health information about an individual from someone else, it must take any steps that are reasonable in the circumstances to ensure that the individual is generally aware of the matters listed in sub clause (1) except to the extent that:*
- (a) *making the individual aware of the matters would impose a serious threat to the life or health of any individual, or*
 - (b) *the collection is made in accordance with guidelines issued under sub clause (3).*
- (3) *The Privacy Commissioner may issue guidelines setting out circumstances in which an organisation is not required to comply with sub clause (2).*
- (4) *An organisation is not required to comply with a requirement of this clause if:*
- (a) *the individual to whom the information relates has expressly consented to the organisation not complying with it or,*
 - (b) *the organisation is lawfully authorised or required not to comply with it, or*
 - (c) *non-compliance is otherwise permitted (or necessarily implied or reasonably contemplated) under any Act or any other law including the State Records Act 1998, or*
 - (d) *compliance by the organisation would, in the circumstances, prejudice the interests of the individual to whom the information relates, or*
 - (e) *the information concerned is collected for law enforcement purposes or,*
 - (f) *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.*
- (5) *If the organisation reasonably believes that the individual is incapable of understanding the general nature of the matters listed in sub clause (1), the organisation must take steps that are reasonable in the circumstances, to ensure that any authorised representative of the individual is aware of those matters.*
- (6) *Sub clause (4) (e) does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence.*
- (7) *The exemption provided by sub clause (4) (f) 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.*

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 he or she can see and correct the health information.

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 5).

Health Privacy Principle 5

Retention and Security

(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 an organisation is done to prevent the 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 sub clause (1)(a).*

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 (HPP 5).

Health Privacy Principle 6

Information about health information held by organisations

- (1) *An organisation that holds health information must take such steps as are, in the circumstances, reasonable, to enable any individual to ascertain:*
 - (a) *whether the organisation holds health information, and*
 - (b) *whether the organisation holds health information relating to that individual, and*
 - (c) *if the organisation holds health information relating to that individual:*
 - (i) *the nature of that information*
 - (ii) *the main purposes for which the information is used, and*
 - (iii) *that person's entitlement to request access to the information.*
- (2) *An organisation is not required to comply with a provision of this clause if:*
 - (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, or*
 - (b) *non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under any Act or any other law (including the State Records Act 1998).*

Health Privacy Principle 7

Access to health information

- (1) *An organisation that holds health 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.*

Note. Division 3 (Access to health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause. Access to health information held by public sector agencies may also be available under the Government Information (Public Access) Act 2009 or the State Records Act 1998.

- (2) *An organisation is not required to comply with a provision of this clause if:*
 - (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, 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).*

Health Privacy Principle 8

Amendment of health information

- (1) *An organisation that holds health 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 health 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 day, complete and not misleading.*
- (2) *If an organisation is not prepared to amend health information under sub clause (1) in accordance with a request by the information to whom the information relates, the organisation 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 health information is amended in accordance with this clause, 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 organisation.*

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

Amendment of health information held by public sector agencies may also be able to be sought under the *Privacy and Personal Information Protection Act 1998*.

- (4) *An organisation is not required to comply with a provision of this clause if:*
- (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, 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*).*

Health Privacy Principle 9

Accuracy

An organisation that holds health 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 and up to date, complete and not misleading.

Council Policy

Council will provide details about what health information Council is holding about an individual and with 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).

Health Privacy Principle 10

- (1) *An organisation that holds health information must not use the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:*

- (a) **Consent**

the individual to whom the information relates has consented to the use of the information for that secondary purpose, or

- (b) **Direct relation**

the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to use the information for the secondary purpose or,

Note: For example, if information is collected in order to provide a health service to the individual, the use of the information to provide a further health

service to the individual is a secondary purpose directly related to the primary purpose.

(c) **Serious threat to health or welfare**

the use of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:

- (i) *a serious and imminent threat to the life, health or safety of the individual or another person, or*
- (ii) *a serious threat to public health and safety, or*

(d) **Management of health services**

the use of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:

- (i) *either:*
 - (A) *that purpose cannot be served by the use of information that does not identify the individual or from which the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
 - (B) *reasonable steps are taken to de-identify the information, and*
- (ii) *if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) *the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(e) **Training**

the use of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:

- (i) *either:*
 - (A) *that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
 - (B) *reasonable steps are taken to de-identify the information, and*
- (ii) *if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) *the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(f) **Research**

the use of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:

- (i) *either:*
 - (A) *that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or*
 - (B) *reasonable steps are taken to de-identify the information, and*
- (ii) *if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*
- (iii) *the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purpose of this paragraph, or*

(g) **Find missing person**
the use of the information for the secondary purpose is by a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or

(h) **Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline**

the organisation:

(i) has reasonable grounds to suspect that:

(A) unlawful activity has been or may be engaged in, or

(B) a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a the Health Practitioner Regulation National Law (NSW), or

(C) an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and

(ii) uses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or

(i) **Law enforcement**

the use of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or

(j) **Investigative agencies**

the use of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or

(k) **Prescribed circumstances**

the use of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.

(2) An organisation is not required to comply with a provision of this clause if:

(a) the organisation is lawfully authorised or required not to comply with the provision concerned, 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) The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.

(4) Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:

(a) 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, or

(b) 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.

(5) The exemption provided by sub clause (1) (j) 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.

Council policy

Council will only use the health information for the purpose for which it was collected or for a directly related purpose that the individual to whom the information relates would expect. Otherwise, Council will obtain the individual's consent (HPP 10).

Health Privacy Principle 11

(1) An organisation that holds health information must not disclose the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:

(a) **Consent**

the individual to whom the information relates has consented to the disclosure of the information for that secondary purpose, or

(b) **Direct relation**

the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to disclose the information for the secondary purpose, or

Note: For example, if information is collected in order to provide a health service to the individual, the disclosure of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.

(c) **Serious threat to health or welfare**

the disclosure of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:

(i) *a serious and imminent threat to the life, health or safety of the individual or another person, or*

(ii) *a serious threat to public health or public safety, or*

(d) **Management of health services**

the disclosure of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:

(i) *either:*

(A) *that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or*

(B) *reasonable steps are taken to de-identify the information, and*

(ii) *if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and*

(iii) *the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*

(e) **Training**

the disclosure of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:

(i) *either:*

(A) *that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or*

(B) *reasonable steps are taken to de-identify the information, and*

(ii) *if the information could reasonably be expected to identify the individual, the information is not made publicly available, and*

(iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or

- (f) **Research**
the disclosure of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:
- (i) *either:*
 - (A) *that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or*
 - (B) *reasonable steps are taken to de-identify the information, and*
 - (ii) *the disclosure will not be published in a form that identifies particular individuals or from which an individual's identity can reasonably be ascertained, and*
 - (iii) *the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or*
- (g) **Compassionate reasons**
the disclosure of the information for the secondary purpose is to provide the information to an immediate family member of the individual for compassionate reasons and:
- (i) *the disclosure is limited to the extent reasonable for those compassionate reasons, and*
 - (ii) *the individual is incapable of giving consent to the disclosure of the information, and*
 - (iii) *the disclosure is not contrary to any wish expressed by the individual (and not withdrawn) of which the organisation was aware or could make itself aware by taking reasonable steps, and*
 - (iv) *If the immediate family member is under the age of 18 years, the organisation reasonably believes that the family member has sufficient maturity in the circumstances to receive the information, or*
- (h) **Finding missing person**
the disclosure of the information for the secondary purpose is to a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or
- (i) **Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline**
the organisation:
- (i) *has reasonable grounds to suspect that:*
 - (A) *unlawful activity has been or may be engaged in, or*
 - (B) *a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a the Health Practitioner Regulation National Law (NSW), or*
 - (C) *an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and*
 - (ii) *discloses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or*
- (j) **Law enforcement**
the disclosure of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement

agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or

- (k) **Investigative agencies**
the disclosure of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or
- (l) **Prescribed circumstances**
the disclosure of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.
- (2) *An organisation is not required to comply with a provision of this clause if:*
- (a) *the organisation is lawfully authorised or required not to comply with the provision concerned, 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), or*
- (c) *the organisation is an investigative agency disclosing information to another investigative agency.*
- (3) *The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.*
- (4) *Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:*
- (a) *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, or*
- (b) *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.*
- (5) *If health information is disclosed in accordance with sub clause (1), the person, body or organisation to whom it was disclosed must not use or disclose the information for a purpose other than the purpose for which the information was given to it.*
- (6) *The exemptions provided by sub clauses (1) (k) and (2) extend 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.*

Council Policy

Council will only disclose health information under the following circumstances:

- With the consent of the individual to whom the information relates; or
- For the purpose for which the health information was collected or a directly related purpose that the individual to whom it relates would expect; or
- If an exemption applies (HPP 11).

Health Privacy Principle 12

Identifiers

- (1) *An organisation may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently.*
- (2) *Subject to sub clause (4), a private sector person may only adopt as its own identifier of an individual an identifier of an individual that has been assigned by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:*
 - (a) *the individual has consented to the adoption of the same identifier, or*
 - (b) *the use or disclosure of the identifier is required or authorised by or under law.*
- (3) *Subject to sub clause (4), a private sector person may only use or disclose an identifier assigned to an individual by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:*
 - (a) *the use or disclosure is required for the purpose for which it was assigned or for a secondary purpose referred to in one or more paragraphs of HPP 10 (1) (c)-(k) or 11 (1) (c)-(l), or*
 - (b) *the individual has consented to the use or disclosure, or*
 - (c) *the disclosure is to the public sector agency that assigned the identifier to enable the public sector agency to identify the individual for its own purposes.*
- (4) *If the use or disclosure of an identifier assigned to an individual by a public sector agency is necessary for a private sector person to fulfil its obligations to, or the requirements of, the public sector agency, a private sector person may either:*
 - (a) *adopt as its own identifier of an individual an identifier of the individual that has been assigned by the public sector agency, or*
 - (b) *use or disclose an identifier of the individual that has been assigned by the public sector agency.*

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).

Health Privacy Principle 13

Anonymity

Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving health services from an organisation.

Council Policy

Council will provide health services anonymously where it is lawful and practical (HPP 13).

Health Privacy Principle 14

Transborder data flows and data flow to Commonwealth agencies.

An organisation must not transfer health information about an individual to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:

- (a) *the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles*

for fair handling of the information that are substantially similar to the Health Privacy Principles, or

- (b) the individual consents to the transfer, or*
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request, or*
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party, or*
- (e) all of the following apply:*
 - (i) the transfer is for the benefit of the individual,*
 - (ii) it is impracticable to obtain the consent of the individual to that transfer,*
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it, or*
- (f) the transfer is reasonably believed by the organisation to be necessary to lessen or prevent:*
 - (i) a serious and imminent threat to the life, health or safety of the individual or another person, or*
 - (ii) a serious threat to public health or public safety, or*
- (g) the organisation has taken reasonable steps to ensure that the information that it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles, or*
- (h) the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.*

Council Policy

Council will only transfer personal information out of New South Wales if the requirements of Health Privacy Principle 14 are met.

Health Privacy Principle 15

Linkage of health records

- (1) An organisation must not:*
 - (a) include health information about an individual in a health records linkage system unless the individual has expressly consented to the information being so included, or*
 - (b) disclose an identifier of an individual to any person if the purpose of the disclosure is to include health information about the individual in a health records linkage system, unless the individual has expressly consented to the identifier being disclosed for that purpose.*
- (2) An organisation is not required to comply with a provision of this clause if:*
 - (a) the organisation is lawfully authorised or required not to comply with the provision concerned, 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), or*
 - (c) 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 HPP 10 (1) (f) or a disclosure of the information that complies with HPP 11 (1) (f).

(3) *In this clause:*

health record *means an ongoing record of health care for an individual.*

health records linkage system *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.*

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 (HPP 15).

PART 5 – IMPLEMENTATION OF THE PRIVACY MANAGEMENT PLAN

5.1 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, the HRIPA and in particular, the 12 Information Protection Principles (IPPs), the 15 Health Privacy Principles (HPPs), the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan and any other applicable Code of Practice.

5.2 RESPONSIBILITIES OF THE PRIVACY CONTACT OFFICER

The Public Officer within Council is assigned the role of the Privacy Contact Officer.

In order to ensure compliance with PPIPA and the HRIPA, the Privacy Contact Officer will review 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 to ensure Privacy.

Council's electronic databases should 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:

- (i) Whether the personal or health 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 or health 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.

5.3 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 Office of the Privacy Commissioner NSW.

PART 6 – INTERNAL REVIEW

6.1 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 suitability 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 lodgment, 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 Office of the Privacy Commissioner NSW 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.

6.2 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 can make a range of orders including an award of damages for a breach of an information protection principle or a health privacy principle.

PART 7 – OTHER RELEVANT MATTERS

7.1 CONTRACTS WITH CONSULTANTS AND OTHER PRIVATE CONTRACTORS

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

7.2 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 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.

7.3 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.

7.4 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 (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.

7.5 REGULAR REVIEW OF PRIVACY MANAGEMENT PLAN

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.

7.7 FURTHER INFORMATION

For assistance in understanding the processes under the PPIPA and HRIPA, please contact the Council or the Office of the Privacy Commissioner NSW.

7.7 REVIEW

This Policy will be reviewed every four years or dependant on legislative changes.

Maintained by Department:	Finance	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	9.21	Effective Date:	
Min No:		Version No:	1	Reviewed Date:	August 2013
Attachments:					

I, a,
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [* please cross out any text that does not apply]

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and

2. *I have known the person for at least 12 months OR *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was
[describe identification document relied on]

.....
[signature of authorised witness]

[date]

Administration Building: 180 Mort Street Lithgow
Postal Address: PO Box 19 Lithgow NSW 2790
Phone: (02) 63549999
Fax: (02) 63514259
Email: council@lithgow.nsw.gov.au
Web: www.lithgow.nsw.gov.au
ABN: 59 986 092 492



Appendix 2: 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 (PPIPA).

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
- (INSERT NAME OF OTHER INTENDED RECIPIENTS)

The supply of information by you is: Voluntary Not voluntary

If you cannot provide, or do not wish to provide, the information sought, the Council

maybe unable to process your application.

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 PPIPA.

Council is to be regarded as the agency that holds the information. However, if it **is not** Council who holds or controls the information, please state below who does:

.....
(INSERT NAME OF AGENCY WHO HOLDS OR CONTROLS THE INFORMATION)

Enquiries concerning this matter can be addressed to:

.....

Signature:

Name to be printed

Date Signed/...../.....

Administration Building: 180 Mest Street Lithgow

PRIVACY & PERSONAL INFORMATION PROTECTION NOTICE

By completion of this form you may be providing Council with personal information. Council will collect the information only for a lawful purpose directly related to the function of Council. Information provided to Council may be used in conjunction with any of Council's business operations. We will take reasonable care not to disclose personal information. Exempt documents may come under the Government Information (Public Access) Act 2009.

Email: council@lithgow.nsw.gov.au

Web: www.lithgow.nsw.gov.au

ABN: 59 986 092 492



Appendix 3: 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 (PPIPA).

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
- (INSERT NAME OF OTHER INTENDED RECIPIENTS)

The supply of information by you is: Voluntary Not voluntary

If you cannot provide, or do not wish to provide, the information sought, the Council may:

.....

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 PPIPA.

Council is to be regarded as the agency that holds the information. However, if it **is**

not Council who holds or controls the information, please state below who does:

.....
(INSERT NAME OF AGENCY WHO HOLDS OR CONTROLS THE INFORMATION)

Enquiries concerning this matter can be addressed to:

Signature:

Name to be printed

Date Signed/...../.....

PRIVACY & PERSONAL INFORMATION PROTECTION NOTICE

By completion of this form you may be providing Council with personal information. Council will collect the information only for a lawful purpose directly related to the function of Council. Information provided to Council may be used in conjunction with any of Council's business operations. We will take reasonable care not to disclose personal information. Exempt documents may come under the Government Information (Public Access) Act 2009.

Administration Building: 180 Mort Street Lithgow
Postal Address: PO Box 19 Lithgow NSW 2790
Phone: (02) 63549999
Fax: (02) 63514259
Email: council@lithgow.nsw.gov.au
Web: www.lithgow.nsw.gov.au
ABN: 59 986 092 492



Appendix 4: 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, ⁽¹⁾

of ⁽²⁾

Hereby request the General Manager of ⁽³⁾

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:

- (1) insert full name
- (2) insert address
- (3) insert name of council

.....
..... State: Post Code:

Note to applicants

Council **will not** record your address or any other contact details that you provide 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 (PPIPA). 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 PPIPA; or
- a Code of Practice may restrict the operation of section 14.

Enquiries concerning this matter can be addressed to:

PRIVACY & PERSONAL INFORMATION PROTECTION NOTICE

By completion of this form you may be providing Council with personal information. Council will collect the information only for a lawful purpose directly related to the function of Council. Information provided to Council may be used in conjunction with any of Council's business operations. We will take reasonable care not to disclose personal information. Exempt documents may come under the Government Information (Public Access) Act 2009.

Fax: (02) 635 14259
Email: council@lithgow.nsw.gov.au
Web: www.lithgow.nsw.gov.au
ABN: 59 986 092 492



Appendix 5: Application under section 14 of the Privacy And Personal Information Protection Act 1998: For access to Applicant's Personal Information

Personal information held by the Council

I, ⁽¹⁾

(1) insert full name

of ⁽²⁾

(2) insert address

Hereby request the General Manager of ⁽³⁾
.....

(3) insert name of council

Provide me with:

- (a) access to all personal information held concerning myself; or
- (b) access to the following personal information only (**LIST INFORMATION REQUIRED BELOW**):

.....
.....

My address for response to this application is:

.....
..... State: Post Code:

Note to applicants

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 (PPIPA).

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 PPIPA; or
- a Code of Practice may restrict disclosure.

Enquiries concerning this matter can be addressed to:

.....

.....

PRIVACY & PERSONAL INFORMATION PROTECTION NOTICE

By completion of this form you may be providing Council with personal information. Council will collect the information only for a lawful purpose directly related to the function of Council. Information provided to Council may be used in conjunction with any of Council's business operations. We will take reasonable care not to disclose personal information. Exempt documents may come under the Government Information (Public Access) Act 2009.

Administration Building: 180 Mort Street Lithgow
Postal Address: PO Box 19 Lithgow NSW 2790
Phone: (02) 63549999
Fax: (02) 63514259
Email: council@lithgow.nsw.gov.au
Web: www.lithgow.nsw.gov.au
 ABN: 59 986 092 492



Appendix 6: Application under section 15 of the Privacy and Personal Information Protection Act 1998: For alteration of Applicant's Personal Information

Personal information held by the Council

I, ⁽¹⁾

(1) insert full name

of ⁽²⁾

(2) insert address

Hereby request the General Manager of ⁽³⁾

(3) insert name of council

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 (PPIPA), 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 PPIPA; or
- a Code of Practice may restrict alteration.

Enquiries concerning this matter can be addressed to:

.....

PRIVACY & PERSONAL INFORMATION PROTECTION NOTICE

By completion of this form you may be providing Council with personal information. Council will collect the information only for a lawful purpose directly related to the function of Council. Information provided to Council may be used in conjunction with any of Council's business operations. We will take reasonable care not to disclose personal information. Exempt documents may come under the Government Information (Public Access) Act 2009.