

**NAME:** PRIVACY MANAGEMENT PLAN

**MEETING ADOPTED:** 28 January 2016  
Resolution No. 280116/14

**HISTORY:** 151211/28; 160812; 251007/19;  
240806/037



**TABLE OF CONTENTS**

**OBJECTIVE..... 1**

**BACKGROUND..... 1**

**DEFINITIONS ..... 1**

**SCOPE OF POLICY ..... 1**

**RELATED DOCUMENTATION..... 2**

**POLICY..... 2**

**1. INTRODUCTION..... 2**

**2. PUBLIC REGISTERS ..... 5**

**3. THE INFORMATION PROTECTION PRINCIPLES..... 9**

**4. HEALTH PRIVACY PRINCIPLES.....27**

**5. IMPLEMENTATION OF THE PRIVACY MANAGEMENT PLAN .....28**

**6. INTERNAL REVIEW .....29**

**7. OTHER RELEVANT MATTERS .....29**

**8. REVIEW.....30**

**APPENDIX 1 - REQUEST TO AMEND PERSONAL INFORMATION .....31**

**APPENDIX 2 - REQUEST TO SUPPRESS PERSONAL INFORMATION .....32**

**APPENDIX 4 - STATUTORY DECLARATION.....33**

## OBJECTIVE

To inform the community about how their personal information will be collected, used, stored and accessed after it is collected by Council.

To advise council officers of their obligations in relation to the handling of personal information and when they can and cannot collect, use, store, or disclose it.

## BACKGROUND

The Privacy and Personal Information Protection Act 1998 (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 (HRIPA).

Both PPIPA and HRIPA impose responsibilities on the collection, storage, use and disposal of personal information. Both Acts also provide the public rights to ensure that personal information is not used for unlawful purposes and provides internal and external review mechanisms to protect those rights.

## DEFINITIONS

<b>Code</b>	Privacy Code of Practice for Local Government
<b>Council</b>	Ballina Shire Council
<b>GIPA</b>	Government Information (Public Access) Act 2009
<b>HIPPs</b>	Health Information Protection Principles
<b>HRIPA</b>	Health Records & Information Privacy Act 2002 (NSW)
<b>IPPs</b>	Information Protection Principles
<b>LGA</b>	Local Government Act 1993 (NSW)
<b>Personal Information</b>	in this plan refers to both personal and health information, except where specific references are made to health information under HRIPA
<b>Plan</b>	Privacy Management Plan
<b>PPIPA</b>	Privacy and Personal Information Protection Act 1998 (NSW)
<b>Reg</b>	Local Government (General) Regulation 2005
<b>SRA</b>	State Records Act 1998

## SCOPE OF POLICY

This policy applies to:

- Council Employees
- Councillors
- Council committees (including community members of those committees which may be established under section 355 of the LGA)

- Consultants and Contractors

Council will endeavour to 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.

## RELATED DOCUMENTATION

- Health Records and Information Privacy Act 2002 (NSW)
- Government Information (Public Access) Act 2009
- Government Information (Public Access) Regulation 2009
- Privacy Code of Practice for Local Government 2000
- Privacy and Personal Information Protection Act 1998 (NSW)
- Records Management Plan

## POLICY

### 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 (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 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.

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 that is contained in a publicly available publication ceases to be covered by PPIPA.

Section 4A of 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. Health information is considered in Part 4 of this plan.

Where Council is requested to provide access to or disclose information that has already been published, then the provisions of the relevant Act that authorises Council to hold that information and not the PPIPA will be relied upon regarding the access or disclosure (for example section 8 of the Government Information (Public Access) Act 2009 (GIPA Act)).

Council considers the following to be publicly available publications:

- advertisements containing personal information published in newspapers;
- personal information on the internet;
- books or magazines 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.

Information published in this way ceases to be covered by PPIPA. Council's decision to publish in this way must be in accordance with PPIPA.

### **1.3. 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 about customers, ratepayers and residents, such as:

- rates records;
- DA applications and objections; and
- various types of health information.

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).

### **1.4. Applications for Suppression of 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.

### **1.5. Caution as to Unsolicited Information**

Where an individual, a group or committee not established by Council provides 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.

## **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 still a register, but it may not be publicly available or contain personal information and therefore is not a public register for the purposes of the PPIPA.

Example: the Companion Animals register.

Disclosure in relation to public registers must comply with Part 6 of 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 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.

Council holds the following public registers;

### **Local Government Act**

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

Note: This list is not exhaustive. Other public registers may be held to which PPIPA applies.

**Environmental Planning and Assessment Act**

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

**Protection of the Environment (Operations) Act:**

- Section 308 – Public register of licences held

**Impounding Act 1993:**

- Section 30 and 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, PPIPA and 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) Council may require any person who applies to inspect information contained in a public register to provide a statutory declaration as to the proposed use of the information.

Council also needs 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.

Information will not be regarded as personal information (and covered by PPIPA) or as health information (for the purposes of part 6 of PPIPA) where it (personal information) is contained in a publicly available publication.

**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.

Example: the register of consents and approvals held 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.

### **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.

The following section provides guidance on what the primary purpose has been specified for each identified register. In some cases a secondary purpose has also been specified (also as guidance only) as to what might constitute a *purpose relating to the purpose of the register*.

### **2.5. Purposes of Public Registers**

#### **Public Registers Held Under the Local Government Act**

##### Section 53 - Land Register

The primary purpose of the Land Register 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.

Example: a disclosure on a section 603 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*.



## **Public Registers Held 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.

## **Public Registers Held 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.

## **Public Registers Held Under the Impounding Act**

### Section 30 and 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 may not fit within this purpose. In this respect Council will be guided by the Privacy Code of Practice for Local Government.

Where there is doubt as to the intended use of the information an applicant may be requested to provide a statutory declaration as to the intended use of the information.

Council will make an 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 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, the information will be suppressed in accordance with the request and section 58(2) of the PPIPA, 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.

When in doubt Council will err in favour of suppression.

Any information that is removed from or not placed on a public register may be kept on the register for other purposes, and not be made public. That is, the information may still be used for council functions but 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. Supporting documentation may be required 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.

## **3. THE INFORMATION PROTECTION PRINCIPLES**

PPIPA (Part 2 Division 1) and HRIPA (Schedule 1) provide for the protection of privacy through certain information protection principles (IPPs).

IPPs are relevant to all stages of handling personal information including the collection, use, security, storage, rights of access and amendment, disclosure, and disposal.

Work practices involving the handling of personal information should be assessed against each of the IPPs to ensure compliance with the acts. If there is a discrepancy between work practices and the IPPs, then the work practice must be modified or discontinued.

### **3.1. Information Protection Principle 1**

#### **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 fulfil its proper functions.

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information, must not 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 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, 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:

- whether the personal information is collected for a lawful purpose;
- if that lawful purpose is directly related to a function of Council; and
- 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 resolved in a manner determined by the General Manager (eg. referral to Council's solicitor).

## **3.2. Information Protection Principle 2**

### **Section 9 - Collection of Personal Information Directly from Individual**

(1) *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.

Example: information received from the Land Titles office fits 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.

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.

### **Information Collected from Websites**

Council collects personal information via its website which may be hosted by a third party. Like many websites, Council uses cookie technology to collect additional website usage data and to improve services. Users can change their browser settings to stop accepting cookies if they do not wish this to occur.

Council may from time to time collect personal information via third party websites that provide services on behalf of Council. For examples;

Online Survey Websites – online survey websites may be used to conduct surveys and community consultation. Some surveys may collect name and contact details of respondents, usually voluntarily if a respondent wishes to be contacted about survey findings.

Online Applications – online software applications may be used to assist the interaction with customers. While these applications may be accessed from Council's website, users may be redirected to a third party website to perform the transaction.

Customers who are redirected to a third party website should make themselves familiar with the privacy policy of that agency or provider.

### **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 consultants
- Private contractors
- Council committees

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

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 applies, Council need not comply. The statutory exemption will be relied upon only in very obvious and limited circumstances and legal advice may be obtained where determined appropriate by the General Manager.

The relevant statutory exemptions are as follows:

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:

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

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

### **3.3. Information Protection Principle 3**

#### **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 collects personal information directly from an individual, such as their name, address, telephone number or email address, it (Council) will advise;

- the purposes for which the information is being collected;
- the intended recipients of the information;
- whether the supply of the information is required by law or is voluntary;
- any consequences for the individual if the information (or any part of it) is not provided;
- the name of the section of council that is collecting the information; and
- the collection of personal information by use of security cameras or other devices will be accompanied by appropriate signage as required by law.

A Privacy Protection Notice will be included on all forms that collect personal information from individuals. A copy of the notice appears below;

### **PRIVACY PROTECTION NOTICE**

The completed <name of form> form contains personal/health information which is being collected for the purpose of <describe the purpose of the form>.

The information will be processed by the <section name> section and may be made available to public enquiries under the Government Information (Public Access) Act.

The information supplied is required under the <name of Act>. **OR**

Provision of the information is voluntary; however if insufficient information is provided Council will be unable to process the application.

The information will be stored in Council's electronic document management system.

## Submissions

Council regularly seeks submissions on matters of public interest such as development applications, significant policies and planning proposals.

Submissions will be considered during assessment and deliberation of the matter, and a full copy of submissions may be printed in the council business paper and be made available to members of the public.

Submitters have a right to remain anonymous if they so choose, however anonymous objections may be given less weight (or no weight) in the overall consideration of the matter.

The community will be made aware of this policy by information on council's website, in policy documents and council advertising. A sample style of notification is included for reference. The general manager may vary this notice at any time subject to there being no change to the intent of the notice.

### **Submissions**

Submissions are publicly available documents. For details on how Council manages submissions refer to our website [www.ballina.nsw.gov.au](http://www.ballina.nsw.gov.au)>>yourcouncil >> access to information >> your privacy.

## Confidential Submissions

Individuals may request in writing that their identifying details be suppressed. Council will give consideration to the public interest and requests for confidentiality by persons lodging submissions in determining access to the relevant letters or applications.

### **External and Related Bodies**

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

- 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.

### **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 applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice may be obtained where determined appropriate by the General Manager..

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

#### 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.

Normally Council relies on the supplier to provide accurate and complete information at the point of collection, although in special circumstances some verification may be necessary.

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 Council's Communications section and or the Privacy Contact officer.

### 3.5. Information Protection Principle 5

#### 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 will include in its documents concerning employment and in any contractual agreements, terms that ensure staff and contractors are aware of their obligations regarding the handling of any personal information obtained in the course of their employment or contract.

Requests that relate to documents where access is restricted will be referred to the Coordinator Records and Information to determine access provisions.

Electronic records are created on a secure network and are backed up on a daily/weekly basis. Personal information will be held in an appropriately secure manner. Information technology requirements, including the use of passwords, are outlined in Council's IT procedures.

Paper records will be managed in accordance with the SRA, and all records are held in appropriately secure areas in council buildings.

Non-current physical records no longer required for ongoing review and reference are transferred to council's archive storage facility where records are protected, secure, and environmental conditions are appropriate to the record format and retention period. Only authorised personnel have access to the archives facility.

Records are disposed in accordance with the appropriate disposal authority (GA) of the SRA. Council's Records Section manages the appraisal and disposal actions for records in accordance with the SRA and the Records Management Plan. The destruction of records is routinely carried out and recorded as required by the SRA.

### **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**

### **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 Council to take reasonable steps to enable a person to determine whether the Council holds personal information about them. Upon request Council will advise 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.

Requests for information regarding the personal information held by Council should be made in writing and addressed to the General Manager.

When an application is received a search of records will be undertaken to answer the enquiry. The applicant will be required to describe what dealings they have had with council in order to conduct the search.

The response time for this application will be within 28 days. The fee structure is commensurate to that of the GIPA Act fee 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 applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice may be obtained where determined appropriate by the General Manager..

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.

## **3.7. Information Protection Principle 7**

### **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 that access is given to personal information held about an individual upon request.

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 an application for access under the PPIPA is involved or complex, it may be transferred 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 GIPA Act. Council must consider the relevant provisions of the GIPA Act.

Requests for access to personal information held by Council should be made in writing and addressed to the General Manager.

Members of staff wishing to exercise their right of access to their personal information should apply to the Manager Risk and Human Resources who will deal with the request.

The response time for this application will be within 28 days. The fee structure is commensurate to that of the GIPA Act fee 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 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 applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice may be obtained where determined appropriate by the General Manager..

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 amend (by way of correction, deletion or addition) personal information held about them to ensure the information is accurate, relevant to the purpose for which the information was collected, up to date and not misleading.

Should a request to amend personal information be declined, an addendum may be added to the information upon request of the individual concerned in accordance with section 15(2) of PPIPA.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the Manager Risk and Human Resources in the first instance. Any alterations that are or could be the subject of a customer complaint will be referred to the General Manager.

## **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 applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice may be obtained where determined appropriate by the General Manager..

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**

Requests to amend information by way of correction, deletion or addition must be received in writing from the person to whom the information relates.

The request should be accompanied by appropriate evidence that sufficiently demonstrates that the proposed amendment is factually correct and appropriate. Further documentary evidence may be required to support certain amendments. Council will not charge to process an application to amend a record under Section 15.

The Council's application form for alteration under IPP 8 is at Appendix 1 at the end of this Plan.

## **Where Council is Not Prepared to Amend**

The act provides that council may refuse to alter or amend its records. If this is the case a statement provided by the applicant may be added as an attachment to the information

## **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**

#### **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.

Example: employee records should be updated when there is any change of circumstances or when contact details change.

### **3.10. Information Protection Principle 10**

#### **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.

Example: rates records held under section 602 of the LGA may also be used to:

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- notify neighbours of a proposed development;
- evaluate a road opening;
- provide contact details of adjoining property owners for fencing and maintenance of property purposes.

### **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 consultants;
- Private contractors; and
- Council committees.

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

### **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 applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice may be obtained where determined appropriate by the General Manager..

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 public revenue. Law enforcement purposes mean 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 (eg the Office of Local Government) or a public sector agency under the administration of the Premier for the purpose of informing the Minister (or Premier) about any matter within the Minister's (or Premier's) administration.

### **3.11. Information Protection Principle 11**

#### **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 applies, 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 mean 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

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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 section 3 of PPIPA.

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

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

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

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

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

## Suppression

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

### 3.12. Information Protection Principle 12

#### 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 following circumstances;

For the purposes of section 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 applies, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

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

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

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

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

Section 28(2) permits non-compliance with Information Protection Principle 12 where, in the case of health information, the consent of the person cannot reasonably be obtained and the disclosure is made by an authorised person to another authorised person. *authorised person*

means a medical practitioner, health worker, or other official or employee providing health or community services who is employed or engaged by a public sector agency.

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

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

### **Suppression**

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

## **4. HEALTH PRIVACY PRINCIPLES**

Health information is a more specific type of personal information and is defined in section 6 of the HRIP Act. Health information includes personal information that is information or an opinion about the physical or mental health or disability of an individual. It can also include such things as a psychological report, blood test, x-ray, information about a person's medical appointments, or personal information that is collected to provide a health service such as a name and telephone number.

Whilst Council does not run or manage health services such as childcare centres or community health support services where specific health information is collected, there may be circumstances in which health information is collected as a part of Council functions. The following is a non-exhaustive list of examples where health information might be collected;

- Tree pruning or removal requests made 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;
- Information collected through a healthy community program;
- Health and medical information about volunteers where relevant to the program or work they are undertaking;
- Health and medical information about staff where relevant to their employment.

### **4.1. Health Privacy Principles (HPPs)**

Schedule 1 of the HRIP Act contains 15 HPPs that Council must comply with.

#### **Council Policy**

Health information will only be collected 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).

Health information will be collected directly from the individual that the information concerns, unless it is unreasonable or impractical to do so (HPP 3).

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People will be informed why their health information is being collected, what it will be used for, to whom it will be disclosed, how it can be accessed and amended and any possible consequences not providing the information (HPP 4).

Health information will be stored securely and protected 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).

Upon request Council will provide details about what health information is held about an individual, why that information is being held and what rights of access the individual has (HPP 6).

An individual will be provided access their health information without reasonable delay or expense (HPP 7).

Upon request individuals can update, correct or amend their health information where necessary (HPP 8).

Council will ensure that health information is relevant and accurate before using it (HPP 9).

Health information will only be used for the purpose for which it was collected or for a directly related purpose unless the individual's consent is obtained (HPP 10).

Health information will only be disclosed with the individual's consent, for the purpose for which it was collected or a directly related purpose; or If an exemption applies (HPP 11).

Identification numbers may be assigned to health information only if necessary for Council to carry out its functions effectively (HPP 12).

Individuals will be allowed to remain anonymous where it is lawful and practicable to do so (HPP 13).

Personal information will only be transferred outside of NSW if the requirements of HPP 14 are met.

Council does not currently use a health records linkage system (HPP 15).

## **5. IMPLEMENTATION OF THE PRIVACY MANAGEMENT PLAN**

### **5.1. Staff Awareness**

Council will ensure that staff are aware of and understand this Plan and how it applies to the work they do, and will promote awareness of privacy obligations among staff by:

- publishing the Privacy Management Plan and information about privacy on Council's infonet and website;
- communicating regularly with staff about privacy;
- ensuring Council policies comply with privacy legislation;
- including the Privacy Management Plan in induction packs; and
- offering training and advice to staff.

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

In order to ensure compliance with IPP 1, forms, rates notices, applications or written requests by which personal information is collected by council will be referred to the Privacy Officer prior to adoption or use.

The Privacy Officer will also provide advice as to:

- whether the personal information is collected for a lawful purpose,

- if that lawful purpose is directly related to a function of council, and
- 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.

### **5.3. Distribution of Information to the Public**

The Privacy Management Plan provides information to the public about how Council manages personal and health information.

Council may also prepare other such as pamphlets on the PPIPA, HRIPA or distribute copies of literature available from the Office of the Privacy Commissioner NSW.

## **6. INTERNAL REVIEW**

Under section 53 of PPIPA a person who is aggrieved by the conduct of council is entitled to a review of that conduct. An application for internal review is to be made within six months of when the person first became aware of the conduct. The application is to be in writing and addressed to the General Manager.

Upon receipt of a review application, a copy will be forwarded to the Privacy Commissioner who will be briefed on the progress of the review and notified of the outcome.

The General Manager or Privacy Officer will conduct the review and consider any relevant material submitted by either the applicant or the Privacy Commissioner.

The review will be undertaken promptly and completed within 60 days.

The outcome of the review may conclude that there has been no breach of privacy principles, that any breach was justified by a relevant exemption or that there has been an unjustified breach.

Any finding of a breach may result in the issuing of a formal apology, the taking of appropriate remedial action, undertaking that the conduct will not recur or the implementation of administrative measures to ensure the conduct does not recur.

As soon as practicable within 14 days of the completion of the review, council will notify the applicant in writing of:

- the findings and the reasons for those findings;
- any proposed actions to be taken; and
- the right to further review by the NSW Civil and Administrative Tribunal (NCAT).

If the complainant remains unsatisfied, they may appeal to the NCAT for an external review of the matter. The NCAT may impose its own decision or make a range of orders including an award of damages for a breach of an information protection principle or a health privacy principle.

## **7. OTHER RELEVANT MATTERS**

### **7.1. Complaints**

Complaints are welcomed feedback and assist in the planning and improvement of systems, procedures and policies. Under Council's Complaints Policy, anonymous complaints will not be accepted. Any person making a verbal anonymous complaint, or who can be identified despite the claim for anonymous standing, shall be advised that strict confidentiality will be applied to their complaint and their name will not be disclosed BUT anonymity will not be permitted.

Confidentiality will be given to complaints according to the PPIPA principles. Wherever possible, complaints are resolved and reviewed locally involving the fewest number of people. Complaints are treated confidentially and information is only used for the purposes for which it was collected unless:

- either the consent of the individual(s) is obtained by a formal GIPA application;
- there are reasonable grounds to believe the information will reduce the threat to life or health of any person; or
- the use is authorised by law.

## **7.2. Recording of Council or Committee Meetings**

- (1) Recording of a meeting of council or a committee of council is not permitted without the authority of the council or committee.
- (2) Under section 10(2)(a)(b) of LGA a person may be expelled from a council or committee meeting for the use of a recorder in contravention of this clause. A recorder includes a video camera, phone or any electronic device capable of recording speech.
- (3) Live video relay of open ordinary council meetings are screened in the foyer of council's customer service centre.
- (4) Full audio and visual recordings are made of ordinary council meetings (excluding deputations, public question time and confidential session. These recordings are available to view or download from Council's website.

## **8. REVIEW**

The Privacy Management Plan is to be reviewed every four years.

**APPENDIX 1 - REQUEST TO AMEND PERSONAL INFORMATION**

**Amend Personal Information in accordance with Part 2 Section 15  
Privacy and Personal Information Protection Act 1998**

**APPLICANT DETAILS**

Name:.....

Address: .....

.....

Contact Ph Number(s): .....

Email: .....

**CHANGES TO PERSONAL INFORMATION**

What needs to be altered or amended?.....

.....

.....

.....

Reason for alteration or amendment .....

.....

.....

.....

Description of supporting documents.....

.....

.....

.....

**PROOF OF IDENTITY**

- Drivers Licence
- Passport
- Known to Officer
- Other

**Office Use Only:**

ID sighted

Staff Signature .....



**ballina**  
shire council

.....  
Applicant's Signature

.....  
Date



**APPENDIX 2 - REQUEST TO SUPPRESS PERSONAL INFORMATION**

**Suppress Personal Information from Public Register in accordance with Section 58  
Privacy & Personal Information Protection Act 1998 (NSW)**

**APPLICANT DETAILS**

Name: .....

Address: .....

.....

Contact Ph Number(s): .....

Email: .....

**REQUEST FOR SUPPRESSION**

Please suppress the following personal information from Council's Public Register: .....

.....

.....

.....

Please nominate public registers if known: .....

.....

.....

.....

Reasons for suppression (please supply copies of supporting documents): .....

.....

.....

.....

**PROOF OF IDENTITY**

- Drivers Licence
- Passport
- Known to Officer
- Other

**Office Use Only:**

ID sighted

Staff Signature .....



.....  
Applicant's Signature

.....  
Date

**APPENDIX 4 - STATUTORY DECLARATION**

**Statutory Declaration**  
*OATHS ACT 1900, NSW, EIGHTH SCHEDULE*

I, ....., do solemnly and sincerely declare that  
*[name of declarant]*

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

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: ..... on .....  
*[place]* *[date]*

.....  
*[signature of declarant]*

in the presence of an authorised witness, who states:

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 confirmed the person's identity using an identification document - the document I relied on was.....  
*[describe the document relied on]*

.....  
.....

.....  
*[signature of authorised witness]* *[date]*