



# Ku-ring-gai Council

## Privacy Management Plan

Adopted 26 February 2013

**Ku-ring-gai Council****Privacy Management Plan****Contents**

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## Part 1 – INTRODUCTION

### 1.1 Purpose

This Plan details how Ku-ring-gai Council deals with the personal information and health information it collects to ensure that it complies with the *Privacy and Personal Information Protection Act 1998* (PPIPA) and the *Health Records and Information Privacy Act 2002* (HRIPA).

PPIPA and HRIPA provide for the protection of personal and health information and for the protection of the privacy of individuals. This Plan has been prepared as required by Section 33 of PPIPA. The Plan outlines Council's policy and plans for information handling practices in respect of both Acts.

The Plan is based on the provisions of the Acts, including exemptions that apply, relevant Codes of Practice approved by the Attorney General and Directions issued by the Information and Privacy Commissioner NSW. These include the *Privacy Code of Practice for Local Government*, the *Health Records and Information Privacy Code of Practice* and Directions from the Information and Privacy Commissioner NSW relating to investigations, research and information transfers.

In exercising its legal obligations under the privacy laws Council will endeavour to act in a fair and reasonable manner and be open and accountable in its decision making. The *Local Government Act 1993*, the *Environmental Planning and Assessment Act 1979* and the *Government Information (Public Access) Act 2009* all contain provisions relating to openness and transparency. To the extent of any inconsistency, the provisions of those Acts prevail over privacy legislation.

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.

Council collects, stores and uses a broad range of information. A significant part of that information is personal information as well as some health information. Council currently provides some health services of the kind

covered by the provisions of HRIPA such as immunisation, child care and family day care. It also collects, holds and uses health information in carrying out various other functions. This Plan applies to that part of Council's information that is personal or health information.

In practice, information that is not personal information or health information may receive treatment accorded to personal information or health information where the information cannot be separated in a meaningful or practical way.

## 1.2 Objectives

The objectives of this policy are to ensure that Council:

- protects the privacy of members of the community, customers, business contacts, Councillors and staff
- fulfils its statutory duties and functions under the *Local Government Act 1993* and other acts in a manner that seeks to maximise compliance with GIPA, PPIPA and HRIPA
- has in place plans that incorporate Information Protection Principles into its functions and operations.

## 1.3 Definitions

In this policy:

**Acts** means PPIPA and HRIPA

**DLG** means the Department of Local Government

**EP&A** means the *Environmental Planning and Assessment Act 1979*

**GCA** means the *Graffiti Control Act 2008*

**GIPA** means the *Government Information (Public Access) Act 2009*

**health code** means the *Health Records and Information Privacy Code of Practice 2005*

**health information** means information so described in clause 1.5

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

**health records linkage system**<sup>1</sup> 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

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<sup>1</sup> clause 15 (3) Schedule 1 HRIPA  
S05981/985377[V3]

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

**HPP** means Health Privacy Principle

**HRIPA** means the *Health Records and Information Privacy Act 2002*

**IA** means the *Impounding Act 1993*

**IPP** means Information Protection Principle

**LGA** means the *Local Government Act 1993*

**LGR** means the *Local Government (General) Regulation 2005*

**LGSA** means the Local Government and Shires Associations of NSW

**model plan** means the DLG *Model Privacy Management Plan - Privacy and Personal Information Protection Act 1998* (Circular 00/41)

**PEO** means the *Protection of the Environment Operations Act 1997*

**personal information** means information so described in clause 1.5 of this plan

**PHSP** means the *Public Health (Skin Penetration) Regulation 2000*

**PPIPA** means the *Privacy and Personal Information Protection Act 1998*

**privacy code** means the *Privacy Code of Practice for Local Government 2000*

**Privacy Officer** means the staff member appointed to that position by the General Manager

**protected disclosure** means a disclosure made in accordance with Council's *Internal Reporting Policy – Protected Disclosures*

**publicly available publication**<sup>2</sup> includes:

- an advertisement containing personal information in a local, city or national newspaper
- personal information on the internet
- book 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 is part of a public display on view to the general public

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<sup>2</sup> see Part 1 Introduction of the model plan  
S05981/985377[V3]

**public register**<sup>3</sup> 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)

**sensitive information**<sup>4</sup> means personal information that is also information about a person's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities

**staff** means all employees of Ku-ring-gai Council (full time, part time, temporary or casual). It also includes, for the purposes of this policy only, all individuals engaged by Ku-ring-gai Council in any paid or unpaid capacity including contractors (who principally provide their labour), committee members, council owned business operators, work experience participants, volunteers, student placements and family day carers

**use** means for a purpose associate with Councils functions; just accessing or viewing is not use.

## 1.4 Application of this Plan

This Plan applies to all Councillors and staff of Council (as defined in clause 1.3).

## 1.5 What is personal information and health information<sup>5</sup>?

Personal information is 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 in a database and does not necessarily have to be recorded in a material form.

Personal information does not include information about an individual that is contained in a publicly available publication. Information published in this way ceases to be covered by PPIPA. However Council's decision to publish in this way must be in accordance with PPIPA.

Health information is a particular type of personal information. Health information means personal information that is about:

- a person's physical or mental health or a disability
- a person's express wishes about the future provision of health services to him or her
- health services being provided to a person (whether in the past, present or future)

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<sup>3</sup> section 3 PPIPA

<sup>4</sup> see section 19 PPIPA

<sup>5</sup> see section 4 of PPIPA and sections 5 and 6 of HRIPA

- other personal information collected about the person in order to provide them with a health service
- donation of body parts, organs or body substances
- genetic information arising from a health service that predicts or could predict the health of the person or of their siblings, relatives or descendants.

Health information can be in a database and does not necessarily have to be recorded in a material form.

Some information is excluded from the provisions of the Acts including information about a person who has been dead for 30 years or longer and information about a person's suitability for appointment or employment as a public sector official<sup>6</sup>. Information of the latter kind will continue to be handled by Council in an appropriately sensitive manner.

## **1.6 The legislative framework**

The handling of both personal information and health information is regulated by a number of different privacy principles. These privacy principles cover the whole information life cycle from start to finish.

In very broad terms, the privacy principles cover collection, security, storage, transparency, access, amendment, accuracy, use and disclosure. Personal information is regulated by 12 IPPs and the public register rules. Health information is regulated by 15 HPPs and the public register rules.

### **The 12 IPPs are:**

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

### **The 15 HPPs are:**

- Principle 1 Purposes of collection of health information

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<sup>6</sup> for full details see section 4 PPIPA  
S05981/985377[V3]

- Principle 2 Information must be relevant, not excessive, accurate and not intrusive
- Principle 3 Collection to be from individual concerned
- Principle 4 Individual to be made aware of certain matters
- Principle 5 Retention and security
- Principle 6 Information about health information held by organisations
- Principle 7 Access to health information
- Principle 8 Amendment of health information
- Principle 9 Accuracy
- Principle 10 Limits on use of health information
- Principle 11 Limits on disclosure of health information
- Principle 12 Identifiers
- Principle 13 Anonymity
- Principle 14 Transborder data flows and data flow to Commonwealth agencies
- Principle 15 Linkage of health records

Exemptions to these privacy principles can be found in:

- PPIPA
- HRIPA
- regulations made under the Acts
- Privacy Codes of Practice made by the Attorney General under PPIPA
- Privacy Codes of Practice made by the Minister for Health under the HRIPA
- public interest Directions made by the Privacy Commissioner under either Act.

In summary Council's privacy obligations are contained within:

- the 12 IPPs
- the 15 HPPs
- the public register rules
- any applicable exemptions to the IPPs, HPPs and public register rules.

## **1.7 Personal and health information held by Council**

Council holds personal and health information concerning ratepayers, residents, customers and other people such as:

- property ownership including names and addresses
- rates payments including the provision of pensioner rebates and bank account details
- various mailing lists
- car registrations/ownership in relation to parking and traffic matters
- applications to access various programs and services such as library services, programs for older people, programs for children
- applications for various approvals such as the removal or trimming of trees and the use of Council facilities



- assessments for community services
- service requests or complaints
- litigation or advice
- development and other land use applications and objections to these applications
- name and address of suppliers, including bank account details
- health histories in relation to immunisation, child care and disabilities
- details of office bearers for sporting, community or other organisations
- closed circuit television footage and photographs.

Council holds personal and health information concerning Councillors such as:

- personal contact and related information
- complaints and disciplinary matters
- returns disclosing interests
- entitlements to fees, expenses and facilities and reimbursements
- closed circuit television footage and photographs.

Council holds personal and health information concerning staff such as:

- recruitment material
- leave and payroll data
- health history and medical reports, including workers compensation
- drivers and other licence details
- personal contact information
- performance management plans
- disciplinary matters
- returns disclosing interests
- wage and salary entitlements
- closed circuit television footage and photographs.

## **1.8 Unsolicited information**

Unsolicited information is information received by Council in circumstances where Council has not asked for the information nor required the information to be provided. It includes gratuitous or irrelevant information received.

Where an individual, a group or a committee not established by Council gives Council unsolicited personal or health information, then that information is not subject to the collection principles in the Acts. The personal or health information is, however, subject to this Plan, the privacy code, the health code and the Acts for the purposes of the protection principles relating to storage, access, use and disclosure.

## **1.9 Confidentiality**

The obligation of confidentiality is additional to and separate from that of privacy. Nevertheless, a duty to appropriately manage information lies at the heart of both concepts.

Confidentiality attaches to information and is owed to the person or organisation that supplied the information (regardless of who or what is the subject of the information). An obligation of confidentiality could arise from a law, contract, or verbal promise.

Privacy is owed to the person whose personal information is the subject of the information (regardless of who supplied the information). Privacy obligations arise out of privacy law.

It is possible that one piece of information will attract both privacy obligations and confidentiality obligations for different reasons. An exemption from one obligation will not affect the other.

### **1.10 Other legislation and policies**

A range of other legislation and Council policies have an impact on how Council handles personal and health information. This includes:

- Code of Conduct (clause 10.11 reinforces obligations in respect of the use and security of personal information)
- LGA and in particular the section 664 disclosure and misuse of information offence provisions, and the section 739 provisions relating to suppression of personal information
- The Government Information (Public Access) Act and Regulations 2009
- the *State Records Act 1998* (in particular the *General Retention and Disposal Authority - Local Government Records - GA39* made under that Act)
- Section 13 of the *Criminal Records Act 1991* (prohibits disclosure of spent and quashed convictions)
- the *Crimes Act 1900* (Part 6 creates offences for unauthorised access to or interference with data in computers)
- the *Independent Commission Against Corruption Act 1988* (corrupt conduct includes the misuse of information held by an agency)
- the *Workplace Surveillance Act 2005*
- the *NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television(CCTV) in Public Places*.

### **1.11 How privacy obligations interact with other laws**

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

Section 664 of 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.

Section 739 of LGA provides for the suppression of information on the grounds of personal safety.

## **1.12 Applications and other forms**

Wherever in this Plan there is a need for a standard form to be used, such as for the submission of an application to Council, the forms contained within the model plan will be used. Alternatively Council will accept a letter that is in a similar form to a model form where appropriate.

Further assistance can be provided by Council's Privacy Officer.

## **PART 2 – PUBLIC REGISTERS**

### **2.1 Access to public registers**

Council maintains a number of public registers that are available for public inspection. Some of these registers contain personal information. No public registers held by Council contain health information.

Personal information cannot be accessed by a person about another person unless the personal information is contained within a public register. Council is required to ensure that any access to personal information in a public register is consistent with the purpose for which the register exists<sup>7</sup>.

However, Council may only disclose personal information in a public register if:

- the information is not suppressed and the disclosure would not be contrary to the public interest
- and either
  - the information is to be used for the purpose for which the register is kept, or
  - the request is to see the register or copy only a single entry or page of the register.

This means that anyone may inspect a publicly available copy of a public register in the Council premises and copy a single entry or page of the register without providing a reason for accessing the register and without a determination that the proposed use of the register is consistent with the purpose of the register<sup>8</sup>.

Unless otherwise permitted (see clause 2.3) where a person wishes to copy more than a single entry or page of a public register the person must complete a statutory declaration stating the purpose for which the information is required and the stated purpose must, in the opinion of the Privacy Officer, be directly related to the purpose of the register. Alternatively personal information may be excluded from the copy.

Registers containing personal information will not be published on the internet.

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.

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<sup>7</sup> section 57 PIPA

<sup>8</sup> clause 2 of privacy code

## 2.2 Public registers held by Council

Council holds the following public registers:

Register Name	Act or other Authority	Purpose of the Register – to record and identify information as stated below
Approvals	LGA s113	approvals granted under LGA
Building Certificates	EP&A s149G	building certificates
Development Applications	EP&A s100	applications for development consent and other approvals, confirm determinations on appeal, applications for complying development certificates, construction certificates, subdivision certificates
Consent Modifications	EP&A s100	modifications to development consents under s96 EP&A
Councillor Voting on Planning and Development Matters	LGA s375A(3)	a division where councillors who voted for and against a decision are recorded in the minutes of the council meeting.
Declarations of Interest at Council and Committee Meetings	LGA s451 and s453	interests declared at meetings and the subsequent action taken
Delegations	LGA s377	powers delegated to the General Manager and staff
Electoral Funding Declarations of Interest	LGA s328A	current declarations of disclosures of political donations lodged with the Election Funding Authority by or on behalf of councillors
Gifts and Benefits	Resolution of Council	gifts and benefits required to be disclosed by Council's policy
Graffiti Removal	GCA s13	graffiti removed by Council
Impounding	IA s30-31	impounding action by Council
Investments	GIPA Schedule 1	funds invested by Council
Land Register	LGA s53 and GIPA Schedule 1	all land vested in or under Council's control
Licences under PEO	PEO s308	licences granted under PEO
Pecuniary and other Interests	LGA s449-450A	pecuniary interests and other matters of Councillors and other persons
Policies	LGA and GIPA Schedule 1	policy documents
Public Notices under PEO	PEO s91	public notices issued under PEO
Skin Penetration Premises	PHSP cl13	registered premises for skin penetration
Tenders	LGR cl175	names of tenders and amounts tendered

The secondary purpose of all public registers includes the provision of access to the public<sup>9</sup>.

### **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.

## **2.3 Special provisions for rates records**

Council's rates records are not available for public inspection. However anyone is entitled to view and copy one entry in the records in a similar manner to that permitted for public registers (see 2.1)<sup>10</sup>.

Viewing and copying more than a single entry or page of the rates records is permissible without mandatory completion of a statutory declaration for the following persons:

- telecommunications carriers and other bodies required to discharge statutory obligations<sup>11</sup>
- registered valuers<sup>12</sup>.

## **2.4 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 LGA. A person may request that their personal information be removed or not placed in a public register<sup>13</sup>. The request must be made in writing outlining the reasons for the request and providing supporting documentation.

If Council is satisfied that the safety or well-being of the person would be affected by not suppressing the personal information as requested, Council will suppress that information unless Council is of the opinion that the public interest in maintaining public access to the information outweighs and the individual interest. When in doubt Council will err in favour of suppression.

Any information that is removed from or not placed on that part of a public register to be made available may be kept on the register for other purposes.

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<sup>9</sup> see Part 2 Public Registers of the model plan

<sup>10</sup> For additional information see DLG Circular 08-15 and Local Government Managers Australia (NSW) Governance Network, Access to Information Held by Council FAQs

<sup>11</sup> LGSA Weekly Circulars 37/00 and 38/00

<sup>12</sup> LGSA Weekly Circular 50/00

<sup>13</sup> see section 58 PPIPA

## 2.5 Electoral matters

The roll of electors and candidate information sheets are publicly available publications. Council will make the latest copies of these publications available for public inspection during office hours at the office of the Council. These publications, however, cannot be copied. Council will refer any requests for copies of the electoral roll to the NSW Electoral Commission<sup>14</sup>.

In addition, the Electoral Commission holds:

- Local Government Register of Political Parties,

The Election Funding Authority holds:

- Local Government Register of Candidates
- Local Government Register of Party Agents
- Local Government Register of Official Agents.

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<sup>14</sup>Model Privacy Management Plan for Local Government – January 2013  
S05981/985377[V3]

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

### **3.1 How Council will meet the Privacy Principles**

The Acts contain principles about the handling of information which impose legal obligations regarding the collection, storage, use, access and disclosure of the information. There are additional requirements regarding the handling of health information which relate to the use of identifiers, the flow of health information outside NSW, and the need for express consent to the inclusion of information in a linked health records system.

The following table sets out in summary form the IPPs/HPPs and how Council will meet the specific requirements of each principle. The table is based on information contained within the entire legislative framework and is intended to be a general guide to Council’s information handling processes.

**Where very specific or unusual circumstances are being dealt with, particularly with regard to the use or disclosure of information, decisions shouldn’t be made based on this summary alone. The assistance of the Privacy Officer should be sought to check the detailed legislative and other provisions.**

Further details can be accessed via the website of the Office of the Privacy Commissioner NSW.

[http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll\\_pnsw.nsf/pages/PNSW\\_index](http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll_pnsw.nsf/pages/PNSW_index).

<b>Collection limitation</b>	IPP 1 (s8) and HPPs 1 & 13
<p>Council must only collect personal and health information:</p> <ul style="list-style-type: none"> <li>• if it is reasonably necessary</li> <li>• for a lawful purpose</li> <li>• if that purpose is directly related to Council’s functions or activities<sup>15</sup>, and</li> <li>• without using unlawful means.</li> </ul> <p>Council must not collect any more personal or health information than is reasonably necessary to fulfil Council’s functions or activities. Where possible, Council will let people access services without having to identify themselves.</p> <p>Contractors involved in the collection of personal or health information must agree to not collect information by unlawful means. This includes contractors in debt recovery processes.</p>	
<b>Collection relevance</b>	IPP 4 (s11) and HPP 2

<sup>15</sup> see section 22 LGA in respect of functions conferred or imposed by other Acts  
S05981/985377[V3]



When collecting personal and health information, Council must use a method that ensures the information collected is:

- relevant
- not excessive
- accurate
- up to date
- complete, and
- does not unreasonably intrude.

Council must not ask for information that is not relevant, intrusive, or might become out of date. In particular, Council must avoid collecting sensitive information where possible.

**Direct collection**

IPP 2 (s 9) and HPP 3

Council must collect personal information directly from the individual to whom the information relates unless:

- the individual has authorised collection of the information from someone else, or
- the information is being provided by a parent or guardian for a person under the age of 16 years, or
- indirect collection is reasonably necessary to confer an award, prize or benefit or similar form of personal recognition on the person to whom the information relates, or
- indirect collection is reasonably necessary for a lawful investigation or court proceedings, or
- indirect collection is permitted by law or necessarily implied or reasonably contemplated by law, or
- it would prejudice the interests of the individual to whom the information relates, or
- the information is otherwise lawfully provided to Council.

Council must collect health information directly from the individual to whom the information relates unless it is unreasonable or impracticable to do so in the circumstances.

**Collection notification**

IPP 3 (s10) and HPP 4

When collecting personal and health information, Council must tell the person:

- the fact that the information is being collected
- the purposes for which the information is collected
- who will be using and storing the information
- whether supply of the information is required by law or is voluntary and the consequences if it is not provided
- how the information may be accessed and corrected.

Notification may be given in writing or verbally. Council will take reasonable steps to ensure each person receives the notification. Such reasonable steps include the provision of a statement that addresses these matters on relevant forms and applications. Council may publish information to inform members of the public and others about information handling practices. The provision of information in community languages may be considered where necessary. It may sometimes be impracticable to specifically refer to these matters in counter transactions, interviews or telephone conversations. Forms used solely for internal purposes will not be affected.

Where submissions are invited on development applications, Council will accept submissions that are made anonymously, however, anonymous objections may be given less weight (or no weight) in the overall consideration of the application<sup>16</sup>.

Council must ensure that any collection of personal information by use of security video cameras or other such recording devices will be accompanied by appropriate signage as required by law. In respect of the recording of Council Meetings further information is provided in 3.3 of this Plan. In respect of Council's obligations under the *Workplace Surveillance Act 2005* further information is provided in Council's *Workplace Surveillance Policy*.

Council is not required to give notice of collection of personal or health information where:

- collection is reasonably necessary to confer an award, prize or benefit or similar form of personal recognition on the person to whom the information relates, or
- compliance is reasonably likely to detrimentally affect lawful investigations or law enforcement, or
- non-compliance is permitted by law or it is necessarily implied or reasonably contemplated by law, or
- compliance would prejudice the interests of the individual to whom the information relates, or
- the person consents to dispensing with the requirement.

If health information is collected about a person from someone other than the person concerned, Council must take reasonable steps to ensure that the person concerned is notified, except where making the individual aware of the matters would pose a serious threat to the life or health of any individual or the collection is made in accordance with guidelines approved by the Minister for Health.

**Security**

IPP 5 (s 12) and HPP 5

Wherever personal and health information is held, Council must:

- not keep it any longer than necessary
- dispose of it securely
- take reasonable security and other measures to protect it from loss,

<sup>16</sup> see clause 3.2 for clarification of privacy issues in relation to submissions made to Council  
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unauthorised access, use, modification or disclosure.

Council can only provide personal information to a contractor or service provider if they really need it to do their job. Council must bind contractors and service providers to Council's privacy obligations and take reasonable steps to prevent any unauthorised use or disclosure of the information by a contractor or service provider.

Information in documentary form is handled in accordance with the provisions of the *State Records Act 1998*. Any disposal of records containing personal or health information must be carried out in a secure manner in accordance with an approved records management disposal schedule.

Personal and health information must be held in an appropriately secure manner. Information technology security requirements for databases, documents and emails include the use of firewalls, virus detection software, audit trails and passwords. All records must be held in appropriately secure areas of Council premises.

Council is not required to comply with this requirement where non-compliance is permitted by law or it is necessarily implied or reasonably contemplated by law.

**Transparency**

IPP 6 (s 13) and HPP 6

council must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- whether or not Council holds any personal or health information
- whether or not Council holds their personal or health information
- what kinds of personal or health information Council holds
- the main purposes for which the information is used
- how the person can see and correct their personal and health information.

Should an individual seek information generally about the nature of any information held, Council may seek an indication of the types of dealings the person has had with Council in order to assist in the identification of relevant information held on different files and in various parts of its information and data systems.

In respect of the personal or health information relating to the affairs of others the consultation provisions outlined in Section 54 of GIPA will apply where appropriate to requests about information held by Council<sup>17</sup>.

Council is not required to comply with this requirement where compliance is reasonably likely to detrimentally affect Council's conduct of a lawful investigation, or non-compliance is permitted by law or it is necessarily implied or reasonably contemplated by law.

**Access**

IPP 7 (s 14) and HPP 7

Council must allow people to access their own personal and health information without unreasonable delay and without unreasonable expense. Requests for access will usually be required to be in writing. Applications will be dealt with as soon as practicable and usually within 28 days.

Staff seeking access to records held about them have rights of access to their personnel file in accordance with Council's *Access to Personnel Files Policy*.

Care must be taken in giving access to information dealt with in a closed Council or Committee Meeting to ensure that no other confidential information is accessed. Personal and health information contained in Council Business Papers for an open meeting is considered to be published and therefore not covered by PIPPA. However Council's decision to publish the information will have regard to PIPPA.

Rights to access personal and health information under the Acts do not extend to information held about other persons, except in respect of IPPs 11 and 12 (disclosure provisions) or where the Public Register provisions apply. Where an individual's personal and health information is contained in documents that also contain information about others, any application for

<sup>17</sup> see section 20(5) PPIPA and section 54 GIPA  
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access will need to be made and processed under GIPA.

Council information may, where relevant, be subject to conditions or limitations on access under GIPA. Under GIPA there is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure. However Council may refuse, or limit, such access in determining an application under GIPA. There may be instances where there could be an overriding public interest against disclosure that may outweigh those public interest considerations in favour of disclosure.

Section 14 of GIPA outlines the grounds which may result in an overriding public interest against disclosure which includes;

- 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
- exempt documents under interstate Freedom of Information legislation

Council is not required to comply with this requirement where non-compliance is permitted by law or it is necessarily implied or reasonably contemplated by law.

#### **Amendment**

IPP 8 (s 15), HPP 8 and s 58 public register rules

Council must allow people to change personal and health information held about them, so that the information is accurate, relevant, up to date, complete and not misleading.

If Council disagrees with the person about whether the information needs changing, Council must instead allow the person to add a statement to the records if requested.

Where a person requests that their information be amended, the person must provide proof of identity and provide appropriate evidence as to why the amendment is needed. In many cases this will be informal (eg. notifying a change of contact phone number). In some cases documentary evidence may be required.

If information is amended, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments.

Council is not required to comply with this requirement where non-compliance is permitted by law or it is necessarily implied or reasonably contemplated by law or where, in respect of personal information, compliance is reasonably likely to affect Council's conduct of a lawful

<p>investigation.</p> <p>GIPA remains an alternative mechanism for amendment of records.</p>
<p><b>Accuracy</b></p> <p style="text-align: right;">IPP 9 (s 16), HPP 9</p>
<p>Council must ensure, so far as it is reasonable in the circumstances, that personal and health information is still relevant and accurate before it is used. Council will check it is:</p> <ul style="list-style-type: none"> <li>• relevant</li> <li>• accurate</li> <li>• up to date</li> <li>• complete</li> <li>• not misleading.</li> </ul> <p>The extent of checking required will depend on the age of the information, the likelihood of change and the significance of the particular function for which the information was collected.</p>
<p><b>Use</b></p> <p>IPP 10 (s 17), HPP 10</p>
<p>Council must not use personal and health information for a purpose other than that for which it was collected unless:</p> <ul style="list-style-type: none"> <li>• the individual to whom the information relates has consented to the use of the information for that other purpose, or</li> <li>• the other purpose for which the information is used is directly related to the purpose for which the information was collected, and in respect of health information, the person would reasonably expect the information to be used for that purpose, or</li> <li>• 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, or in respect of health information, to lessen or prevent a serious threat to public health or public safety, or</li> <li>• the use of personal information is reasonably necessary for the exercise of Council’s lawful functions, or</li> <li>• 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, or</li> <li>• where compliance is reasonably likely to detrimentally affect a lawful investigation or law enforcement, or</li> <li>• where non-compliance is permitted by law or it is necessarily implied or reasonably contemplated by law.</li> </ul> <p>Council must also not use health information for a purpose other than that for which it was collected unless it is reasonably necessary for:</p> <ul style="list-style-type: none"> <li>• the funding, management, planning or evaluation of health services, or</li> </ul>

- the training of staff or persons working with Council, or
- research or statistical analysis.

Some information collected by Council may be used for a variety of purposes. For example, the names and addresses of individual owners of property kept as part of Council's rates records may be used to notify adjoining owners of proposed developments, to identify companion animal ownership, evaluate road openings and obstructions, evaluate tree preservation orders, investigate parking controls and evaluate land dedications, etc.

Staff investigating these issues and using personal information for these purposes will not notify individuals to obtain approval to perform these functions.

### **Disclosure**

IPPs 11& 12, HPPs 11,14 & 15 and s 57 public register rules

Council must only disclose personal information from a public register in accordance with Part 2 of this Plan.

Council must not disclose sensitive information without the person's express consent unless the disclosure is authorised by legislation or is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Council must only disclose personal and health information:

- with the person's consent, or
- for the purpose for which it was collected, or
- a directly related purpose and Council has no reason to believe that the person would object, or
- if the person was informed at the time of collection that their information would be disclosed in this way or the person is reasonably likely to be aware of this disclosure, or
- where Council 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, or
- for a lawful investigation or for law enforcement purposes, or
- where disclosure is authorised by subpoena, warrant or other lawful requirement, or
- where non-compliance is permitted by law or it is necessarily implied or reasonably contemplated by law.

In addition Council may only disclose health information if it is reasonably necessary for:

- the funding, management, planning or evaluation of health services, or
- the training of staff or persons working with Council, or
- research or statistical analysis, or
- the provision of information to an immediate family member on compassionate grounds.

Council may disclose personal information to public sector agencies or public utilities on condition that:

- the agency has approached Council in writing, and
- Council is satisfied that the information is to be used by that agency for the proper and lawful functions of that agency, and
- Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's functions, or
- 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.

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 the person has applied.

Council will not disclose the information to any person or body who is in a jurisdiction outside New South Wales unless a relevant privacy law that applies to the personal information concerned is in force in that jurisdiction, or the disclosure is permitted by law.

If information is disclosed in accordance with this principle 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.

#### **Health personal identifiers and linking records**

HPPs 12 & 15

Council must only identify people by using unique personal identifiers if it is reasonably necessary to carry out Council's functions efficiently.

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

Council 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:

- Council 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
- the individual consents to the transfer, or



- the transfer is necessary for the performance of a contract between the individual and the Council, or for the implementation of pre-contractual measures taken in response to the individual's request, or
- the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the Council and a third party, or
- all of the following apply:
  - the transfer is for the benefit of the individual,
  - it is impracticable to obtain the consent of the individual to that transfer,
  - if it were practicable to obtain such consent, the individual would be likely to give it, or
- the transfer is reasonably believed by the Council to be necessary to lessen or prevent:
  - a serious and imminent threat to the life, health or safety of the individual or another person, or
  - a serious threat to public health or public safety, or
- Council has taken reasonable steps to ensure that the information that it has transferred will not be held, or used or disclosed by the recipient of the information inconsistently with HPPs, or
- the transfer is permitted or required by law.

Council must not:

- 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
- 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.

Council is not required to comply with a provision of this clause if:

- the Council is lawfully authorised or required not to comply with the provision concerned, or
- 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
- the inclusion of the health information about the individual in the health records information system (including where an identifier of the individual is to be disclosed) is a use or disclosure of information for research or statistical analysis that complies with HPP 10(1)(f) or HPP 11(1)(f).

## **3.2 Submissions on development applications and other matters**

The following information deals with the privacy issues in relation to submissions made to Council.

Council will continue to seek submissions on matters of public interest, including development applications, planning matters and significant plans and policies. All submissions received will be taken into consideration by Council during deliberations on the matter. Submissions will be available to Councillors.

In respect of submissions on development applications, Council considers that a person can only fully assess the impact of a proposed development by having knowledge of the internal layout of that proposed development. Council will, as part of its notification process, make plans of internal layouts available with the development application and other accompanying documents and plans. This is to facilitate public participation in the development assessment process.

Anyone may seek access to a submission in accordance with the provisions of LGA or GIPA. Submissions on development applications and planning matters may be viewed, and copied, by anyone without the need for a formal application under LGA or GIPA. A reasonable fee may be charged by Council for providing a copy of a submission – see Council's Fees and Charges.

Where the matter is considered at a Council or other public meeting, the public business paper for the meeting will usually provide a summary of the submissions received with little or no personal information included. However, in relation to development applications and planning matters in particular, personal information, including names and addresses of persons who made submissions and copies of those submissions, may be included in the public business paper when considered necessary to assist the understanding of relevant issues. That information will then be accessible on Council's website, although information that may aid identity fraud (e.g. signatures) will be deleted.

Council's website contains a DA tracking services that gives customers fast and convenient access to information on development applications. Documents relating to the development are listed. However submissions on development applications are not listed.

Anyone making a submission on any matter may request in their submission that personal information that discloses their place of living be suppressed on the grounds of their own or their family's personal safety. If such a request is made and verified, Council will not include any of their personal information in a public business paper. Alternatively submissions may be made anonymously. However, anonymous objections may be given less weight (or no weight) in the overall consideration of the matter.

Council will give this matter publicity to make the community aware of the public accessibility of certain submissions. In particular, where practicable Council will advise adjoining owners and others that any submission made on

a development application or planning matter may be viewed and copied by anyone.

### **3.3 Recording of Council Meetings**

The following information deals with the privacy issues in relation to the tape recording of Council Meetings<sup>18</sup>.

Council's Code of Meeting Practice provides for the recording of Council Meetings as an aid in the preparation of the minutes of the meeting. Parts of the meeting closed to the public are not recorded. Prior notice is given to people addressing the Council that they are being recorded. A notice is also displayed in the Council Chamber.

Recordings are used for the purpose of verifying the accuracy of the minutes.

Recordings of meetings may be accessed by Councillors in accordance with the *Councillor Access to Information and Interaction with Staff Policy*.

Applications for access to tape recordings of meetings by the public may be made under GIPA. Council will not provide other access to any third party except where Council is authorised to do so by any law, court order, warrant or subpoena.

Recordings of meetings will be destroyed as soon as their original purpose is served or three months after their creation (whichever is the later), except where retention for a longer period is otherwise required or recommended under the *State Records Act 1998*.

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<sup>18</sup> see *The Tape Recording of Council Meetings*, NSW Privacy Commissioner, May 2004 and *Meetings Practice Note*, Department of Local Government, November 2005

## **PART 4 – INITIAL ENQUIRY OR COMPLAINT**

### **4.1 Seeking access to personal information**

Any person is entitled to obtain access to any personal information that council holds about them. They may request alterations be made to their personal details or request information on the way their personal details have been used. It is important that the initial enquiry or complaint be a formal submission, in the form of a letter addressed to:

The General Manager  
Ku-ring-gai Council  
818 Pacific Highway  
GORDON NSW 2072

Where a person has requested information about their personal affairs and has been refused access and is unsatisfied with Council's response they are entitled to request an internal review of the initial complaint or enquiry.

A person is entitled to apply for an internal review in circumstances where;

- they are aggrieved by the conduct of Council in the following circumstances:
  - a) contravention of a privacy principle that applies to Council
  - b) contravention of a code of practice that applies to Council
  - c) disclosure of personal information kept on a public register, or
- they have made an initial request for access to personal information or requested a response concerning Council's actions concerning their personal information.

### **4.2 Internal review process**

Complaints are to be made within 6 months of the complainant first becoming aware of the conduct. The complaint is to be in writing and addressed to Council's General Manager. The complaint need not use the language of internal review, but if it is a privacy complaint in writing, then Council will treat it as a request for an internal review.

Council's Privacy Officer will conduct the internal review unless substantially involved in any matter relating to the complaint. Alternatively the internal

review will be conducted by another person appointed by the General Manager. Investigations will be conducted making use of *Privacy NSW*,

*Complaints to Public Sector Agencies, Internal Review Checklist for the Respondent Agency.*

On receipt of the request for Internal Review, Council will notify the Information and Privacy Commissioner NSW. The Commissioner will also be informed of the progress and the outcome of the review.

The review is to be completed within 60 days of the lodgement of the complaint. The Public Officer will consider any relevant material submitted by either the applicant or the Commissioner.

The review may conclude that no breach of the privacy principles or a code has occurred, that any breach was justified by a relevant exemption that applies to Council's handling of the information, or that a breach has occurred without justification.

Following completion of the Internal Review, Council may do one or more of the following;

- take no further action on the matter
- make a formal apology to the applicant
- take appropriate remedial action
- provide undertakings that the conduct will not occur again
- implement administrative measures to ensure that the conduct will not occur again

As soon as practicable and within 14 days of the completion of the Internal Review, Council will notify the applicant and the Commissioner in writing of;

- a) the findings and the reasons for those findings
- b) any proposed actions to be taken
- c) the right of the applicant to have those findings, and the Council's proposed action, reviewed by the Administrative Appeals Tribunal.

### **4.3 After an internal review**

If the complainant is not satisfied with the internal review, or the internal review has not been completed within 60 days of request, an appeal may be lodged with the Administrative Decisions Tribunal. The Tribunal hears the matter afresh. The Tribunal may impose its own decision ordering Council to provide a remedy including an apology, a change in practices or awarding of damages.

## **PART 5 – IMPLEMENTATION**

### **5.1 Training**

The implementation of this Plan is the responsibility of the Council and the General Manager.

Councillors and staff will be given initial and refresher training in this Plan.

Directors and managers are required to work with the Privacy Officer to ensure that Council continually meets its privacy obligations.

### **5.2 Privacy Officer**

Council's Privacy Officer is responsible for:

- assisting in developing processes and procedures to enable Councillors and staff to meet their obligations under the Acts
- checking new proposals involving the collection of personal or health information to ensure compliance with the Acts
- acting as a point of contact for enquiries and advice regarding the Acts within the Council
- conducting and reporting on internal reviews
- assisting with training and induction
- reviewing the Privacy Management Plan.

### **5.3 Breaches of this plan**

Unless it is in connection with the lawful exercise of duties, a Councillor or staff member (past or present) must not intentionally disclose, use, or offer to supply any personal or health information about another person. To do so is an offence that may result in a fine or imprisonment. This does not apply to a protected disclosure.

The offence of inducing (or attempting to induce) a Councillor or staff member by corrupt conduct to disclose personal or health information about another person is similarly punishable.

Suspected breaches of this Plan or Council's privacy obligations generally should be reported in writing to the General Manager.

## **5.4 Annual Reporting**

In accordance with the provisions of clause 5 (c1) and (c2) of the *Annual Reports (Departments) Regulation 2005* Council will report on the;

- A statement of the action taken by Council in complying with the requirements of the *Privacy and Personal Information Protection Act 1998*.
- Statistical details of any review conducted by, or on behalf, of Council under Part 5 of the *Privacy and Personal Information Protection Act 1998*.

Council's statutory reporting obligations on privacy matters will be included in Council's Annual Report each year.

## **5.5 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.

## **5.6 Contracts with consultants and other private contractors**

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

## **5.7 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.

## **5.8 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.

## **PART 6 - ASSOCIATED DOCUMENTS**

### **6.1 Codes and policies**

*Access to Personnel Files Policy*

*Code of Conduct*

*Code of Meeting Practice*

*Councillor Access to Information and Interaction with Staff Policy*

*Complaints Policy*

*Gifts and Benefits Policy*

*Grievance and Dispute Resolution Policy*

*Internal Reporting Policy – Protected Disclosures*

*Internet and Email Policy*

*Records Preservation and Disposal Program*

*Workplace Surveillance Policy*

### **6.2 External references**

*Division of Local Government, Circular 13-03, revised model privacy management plan for Local Government, 22 January 2013 and the associated documents*

*Attorney General, Code of Practice for Local Government - Privacy and Personal Information Protection Act 1998, June 2000*

*Attorney General, Health Records and Information Privacy Code of Practice, July 2005*

*Attorney General, NSW Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television (CCTV) in Public Places, 2000*

*Department of Local Government, Circular 08-15, Local Government Managers Australia (NSW) Governance Network – Access to Information Policies and Template Documents, 8 April, 2008, and the associated documents*



*Department of Local Government, Meetings Practice Note, November 2005*

*Department of Local Government, Model Privacy Management Plan - Privacy and Personal Information Protection Act 1998, June 2000*

*Privacy Commissioner, Direction on Disclosures of Information by Public Sector Agencies for Research Purposes, December 2006*

*Privacy Commissioner, Direction on Information Transfers between Public Sector Agencies, December 2006*

*Privacy Commissioner, Direction on Processing of Personal Information by Public Sector Agencies in Relation to their Investigative Functions, December 2006*

*Privacy Commissioner, Public Registers and the Internet, Fact Sheet No. 7, April 2004*

*Privacy Commissioner, The Tape Recording of Council Meetings, May 2004*

*Privacy NSW, Complaints to Public Sector Agencies, Internal Review Checklist for the Respondent Agency*

*State Records Authority of NSW, General Retention and Disposal Authority - Local Government Records (GA 39), 2011*