



Attachments

Planning and Strategy Committee

Notice is hereby given that an Planning and Strategy Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 4 March 2013

Commencing at 7.30pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

Copies of business papers are available at the Customer Service Counters at Manly Council, Manly Library and Seaforth Library and are available on Council's website:

www.manly.nsw.gov.au

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***** END OF ATTACHMENTS *****

Manly Council



Privacy Management Plan

February 2013

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Manly Council Privacy Management Plan for Local Government

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Title: Privacy Management Plan

Policy No: MAN-POL-0213

Keywords: Privacy, Privacy Plan, PPIP Act, HRIP Act, Health Privacy, Privacy Officer, Privacy Principles, Information Protection Principles

Responsible Officer: Manly Council Public Officer

1. Preface:

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

In particular, the object of this Privacy Management Plan (the "Plan") is to inform:

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

Section 33 of the PPIP Act requires all councils to prepare a Plan to deal with:

- the devising of policies and practices to ensure compliance by the Council with the requirements of the PPIP Act and the HRIP Act;
- the dissemination of those policies and practices to persons within the Council;
- the procedures that the Council proposes for internal review of privacy and health information 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 PPIP Act.

PPIP Act provides for the protection of personal information by means of 12 Information Protection Principles (the "IPPs").

The IPPs are *modified* by the Privacy Code of Practice for Local Government ("the Code") made by the Attorney General.

The HRIP Act also provides for the protection of health information by the means of 15 Health Protection Principles (the "HPPs"). To date there has been no Health Records and Information Privacy Code of Practice made for Local Government.

The Code has been developed to enable Local Government to fulfil its statutory duties and functions under the *Local Government Act 1993* (the "LG Act") in a manner that seeks to comply with the PPIP Act.

This Plan outlines how the Council will incorporate the IPPs and the HPPs into its everyday functions.

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2. Introduction:

Who the Plan Applies to:

The PPIP Act, the HRIP Act and this Plan apply, wherever practicable, to:

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

Council will ensure that all such parties are made aware that they must comply with the PPIP Act, the HRIP Act, any other applicable Privacy Code of Practice and this Plan.

Inspection of Electoral Roll:

The LG Act requires that the Council make the latest copy of the non-residential roll and of the roll of occupiers and rate paying lessees (once it is prepared) available for public inspection at any reasonable time during office hours at the office of the council.

This can be inspected at Manly Library during its ordinary opening hours.

Personal Information Held by Council:

The Council holds personal information concerning Councillors, such as:

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

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

- rates records; and
- Development 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;

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- wage and salary entitlements; and
- health information (such medical certificates and workers compensation claims).

Applications for Suppression in Relation to General Information (not public registers):

Under section 739 of the LG Act 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 LG Act 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) there is further discussion in this Plan as to how you can make an application to have your personal information suppression from public information.

Caution as to Unsolicited Information:

Where an individual, a group or committee, not established by Council, gives Council unsolicited personal or health information, then that information should be still treated in accordance with this Plan, the Codes, the HRIP Act and the PPIP Act for the purposes of the 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 HRIP Act, 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 PPIP ACT also provides that personal information is not "collected" by Council if it is unsolicited.

3. Public Registers:

A public register is defined in section 3 of the PPIP Act:

"...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 PPIP Act and "non public registers". A "non public register" is a register but it is not a "public register" for the purposes of the PPIP Act. For example, the register might not be publicly available or it may not contain personal information.

Disclosure in relation to public registers must comply with Part 6 of the PPIP Act and the Code. Personal information cannot be accessed by a person about another person unless the personal information is contained in a public register. Where personal information is contained in a public register, then Part 6 of the PPIP Act 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 IPPs as outlined in Part 2 of this Plan and the Code where it includes personal information that is not published.

The Council holds the following public registers under the LG Act:

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

Note – this is purely indicative. Council may, by virtue of its own practice, hold other Public Registers, to which the PPIP Act applies.

Council holds the following public registers under the *Environmental Planning and Assessment Act 1979* (the “EP&A Act”):

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

Council holds the following public register under the *Protection of the Environment (Operations) Act 1997* (the “POEO Act”):

- Section 308 – Public register of licences held

Council holds the following public register under the *Impounding Act 1993* (the “Impounding Act”):

- Section 30 & 31 – Record of impounding

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

Public Registers - the PPIP Act and the HRIP Act:

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 PPIP Act, section 56A of the PPIP Act *includes* as “personal information”, “health information” on public registers.

Section 57 of the PPIP Act 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) of the PPIP Act provides that in order to ensure compliance with section 57(1), a Council may require any person who applies to inspect personal information contained in the public register to give particulars in the form of a statutory declaration as to the proposed use of that information.

Councils also need to consider the Code which has the effect of modifying the application of Part 6 of the PPIP Act (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.

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Where personal information is contained in a publicly available publication, that information will not be regarded as personal information covered by the PPIP Act or as health information for the purposes of part 6 of the PPIP Act.

Effect on Section 6 of the Government Information (Public Access) Act 2009:

Section 57 of the PPIP Act prevails over clause 1(3) of Schedule 1 of the *Government Information (Public Access) Regulation 2009* (the "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 PPIP Act.
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 PPIP Act; and
 - (ii) there is no overriding public interest against disclosure of the information under section 6 of the *Government Information (Public Access) Act 2009* (the "GIPA Act").

Note: Both 1 and 2 are amended with regard to specific public registers in the Code.

Where Some Information in the Public Register Has Been Published:

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

For example, the Register of Consents and Approvals held by Council under section 100 of the EP&A 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 PPIP Act.

Council may hold a register under the *Contaminated Land Management Act 1997* on behalf of the Environment Protection Authority (the "EPA"). This is not to be considered a public register of the Council as the statute does not place any obligations on the Council to make this register publicly available as a register of contaminated land. Furthermore, the legislation foreshadows that the EPA may indeed post this list or register on the internet. This may constitute a publication of the information and therefore the PPIP Act will not apply.

Registers should not be published on the internet.

Disclosure of Personal Information Contained in the Public Registers:

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

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

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Purposes of Public Registers:

Purposes of Public Registers under the LG Act:

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

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

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

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

Purposes of Public Registers under the EP&A Act:

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

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

Purposes of Public Registers under the POEO Act:

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

Purposes of the Public Register under the Impounding Act:

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

Secondary Purpose of all Public Registers:

Due to the general emphasis (to be found in the LG Act 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 PPIP Act.

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

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

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Other Purposes:

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

Applications for Access to Own Records on a Public Register:

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

Applications for Suppression in Relation to a Public Register:

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

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

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

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

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

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

Other Registers:

Council may have other registers that are not public registers. The IPPs, this Plan, any applicable Codes and the PPIP Act apply to those registers or databases.

4. The Information Protection Principles:

IPP1 - Collection of Information for Lawful Purposes:

The Council will not collect personal information unless:

- information is collected for a lawful purpose that is directly related to a function or activity of Council; and
- the collection of the information is reasonably necessary for that purpose.

The Council will not collect personal information by any unlawful means.

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The Code makes no provision to depart from the requirements of IPP1.

Council will continue to collect and deliver personal information to and from Government Departments involved in the normal functions of Council's operation. This Council will continue the practice of dealing with the NSW Department of Community Services ("DOCS") for enquiries on personnel and recruitment matters i.e. for pre-employment screening of people working with children (*Children and Young Persons (Care and Protection) Act 1998*).

Council will use any personal information for a variety of purposes within its organisation, on most occasions the information is collected for a main purpose; but it may be used for a variety of other secondary purposes related to the functions of Council.

For example, the names and addresses of individual owners of property which are kept on the Rate and Valuation Register are used:

- to notify adjoining owners of proposed development;
- identify companion animal ownership;
- evaluate road openings and obstructions;
- evaluate tree preservation orders;
- investigate parking controls;
- evaluate land dedications and laneway status;
- as well as being the basis of the Rate and Valuation Register.

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

Role of the Privacy Officer:

In order to ensure compliance with IPP1, prior to adoption or use of things such as internet contact forms, rates notices, application forms of whatsoever nature, or written requests by which personal information is collected by Council, they will be vetted and approved by the Privacy Officer.

The Privacy Officer will also provide advice as to:

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

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

The Privacy Officer will also provide advice on health information as set out in Part 5 of this Plan.

IPP2 - Collection of Personal Information Directly from the Individual

When collecting personal information, Council will collect information only from the individual to whom the information relates unless:

- the individual has authorised collection from someone else; or

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- the information has been provided by a parent or guardian of a person under the age of 16.

The Code makes provision for Council to depart from IPP2 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 may collect personal information indirectly from another public sector agency in respect of any one of its statutory functions. A common example of the collection of information from another public sector agency is the Land and Property Information. Council receives information as to new ownership changes when property is transferred from one owner to the next.

IPP3 - Requirements when Collecting Personal Information:

When Council collects personal information about an individual, that person will be notified of:

- the fact that the information is being collected;
- the purposes for which the information is collected;
- the intended recipients of the information;
- whether the supply of the information is required by law is voluntary;
- and any consequences for the individual if the information (or any part of it) is not provided;
- the existence of any right of access to, and correction of the information;
- Council's name and address; and
- where the information will be stored.

Council has a policy not to release the names and addresses of complainants or objectors who claim confidentiality on development, building issues or other complaints. However, people claiming confidentiality must be aware that their personal information may still be released:

- Via a formal Access Application for that information under the GIPA Act;
- Under provisions of the PPIP Act;
- If required by any other legislation to provide that information to a third party; or
- As required by law if the Council is served with a legal process requiring it to produce that information as part of legal proceedings.

Any anonymous objections or submissions by Council may be given little or no weight when determining development or building issues.

Council may depart from IPP3 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.

IPP4 - Other Requirements Relating to the Collection of Personal Information:

Council will take reasonable steps to ensure that:

- information collected is relevant to a purpose, is not excessive, and is accurate, up to date and complete; and
- 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 Code makes no provision to depart from IPP4.

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IPP5 - Retention and Security of Personal Information:

With regard to the retention and security of personal information, Council will ensure:

- that information is used for a lawful purpose and is kept for no longer than is necessary;
- that the information will be disposed of securely;
- that the information is protected against loss, unauthorised access, use, modification or disclosure and against all other misuse (as are reasonable in the circumstances); and
- if it is necessary to release the information to a person in connection with the provision of a service to Council, everything reasonably is done to prevent unauthorised use or disclosure of the information.

The culling and destruction of records will be carried out according to Records Management procedures.

The Code makes no provision to depart from IPP5.

IPP6 - Information about Personal Information held by Council:

If Council holds personal information about any individual it must take the necessary steps to enable any person to ascertain:

- whether the Council holds personal information;
- whether the Council holds personal information relating to that person; and
- if Council holds personal information relating to that person:
 - the nature of that information;
 - the main purposes that the information is being used; and
 - that person's entitlement to gain access to that information.

Principle 6 is subject to the provisions of the GIPA Act.

The Council will issue a statement to be included on its web page (if it has one) and in its Annual Report concerning the nature of personal information it regularly collects, the purpose for which the personal information is used and an individual's right to access their own personal information.

The Code makes no provision to depart from IPP6.

IPP7 - Access to Personal Information Held by Council:

Any person will be able to ascertain whether Council holds their personal information by completing an Application for Access to Council Information Form. This will be processed by the Access to Information Officer. This may mean that the application for access to personal information may be dealt with similar to or the same as an application made pursuant to the GIPA Act.

The Code makes no provision to depart from IPP7.

IPP8 - Alteration of Personal Information:

Any person who is unhappy with the accuracy or acceptable use of their personal information kept by Council, may request amendments be made to that information by writing to the General Manager.

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Council has an obligation to take such steps to amend personal information where necessary. If Council decides that it will not amend the information, it must add the additional information, so it can be read with the existing information and notify the person making the application. The person to whom the information relates is entitled to have the recipients of that information notified of the amendments made by Council.

IPP8 is subject to the provisions of the GIPA Act.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be treated in accordance with Council's "Complaint Handling Procedures".

Any alterations that are or could be the subject of a customer complaint or grievance will be handled in accordance with Part 6 of this Plan.

The Code makes no provision to depart from IPP8.

IPP9 - Council Must Check the Accuracy of Information Before Use:

Council will take reasonable steps to ensure the accuracy of personal information prior to use, having regard to the purpose it was collected, its proposed use, its relevance, accuracy, whether it is up to date, complete and not misleading.

The Code makes no provision to depart from IPP9.

IPP10 - Limits on Use of Personal Information:

Council will not use personal information for a purpose other than that for which it was collected unless:

- the individual to whom the information relates has consented to the use of the information for that other purpose; or
- the other purpose for which the information is used is directly related to the purpose for which it was collected; or
- 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 that information relates or of another person.

Council will use any personal information for a variety of purposes within its operations, on most occasions the information is collected for a main purpose and it may be used for a variety of other secondary purposes.

For example, the names and addresses of individual owners of property kept on the Rates Register are used:

- to notify adjoining owners of proposed development;
- identifying companion animal ownership;
- evaluating road openings and obstructions; and
- evaluating tree preservation orders;
- as well as being the basis of the Rating and Valuation Register.

Staff investigating these uses of personal information need not notify individuals for approval to perform these functions.

Personnel and recruiting records may be discussed with solicitors when the need arises and with administrative staff when necessary without prior approval of individuals.

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

- where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s; or
- 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.

IPP11 - Limits of Disclosure of Personal Information:

Council will take reasonable care not to disclose personal information unless:

- the disclosure is directly related to the purpose for which it was collected and there is no reason to believe the individual concerned would object; or
- the individual has been made aware that this kind of information is usually released; or
- disclosure is necessary to prevent or lessen a serious or imminent threat to the life of the individual concerned or another person.

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

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

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.

Council will not 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.

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

- Council may disclose personal information to public sector agencies or public utilities on condition that:
 - the agency has approached Council in writing;
 - Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency; and
 - Council is satisfied that the personal information is reasonably necessary for the exercise of that agency's function/s.
- 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.
- 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

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may include an opinion as to that person's suitability for the position for which he/she has applied.

IPP12 - Special Restrictions on Disclosure of Personal Information:

Council will take reasonable care not to disclose personal information that:

- relates to an individual's ethnic or racial origin, political opinions, religion 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.
- relates to any inquiry from anyone outside the state of New South Wales unless:
 - a relevant privacy law applies to personal information in force in that jurisdiction; or
 - the disclosure is permitted under a privacy code of practice (a law determined by the Privacy Commissioner and published in the Government Gazette).

Council will ensure that information that is disclosed in accordance with the requirements of the GIPA Act.

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

- For the purposes of section 19(2) of the PPIP Act 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.

5. Health Privacy Principles:

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

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

Health information is defined in section 6 of the HRIP Act. Manly Council may hold health information by reason of their role in elder care, child care and various types of community health support services. It is therefore very important for councils to be familiar with the 15 HPPs set down in Schedule 1 to the HRIP Act. Each of these HPPs are considered below.

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

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

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

HPP1 - Purposes of Collection of Health Information:

Council will only collect health information for a lawful purpose that is directly related to Council's activities and is necessary for that purpose.

Role of the Privacy Officer:

In order to ensure compliance with HPP1, prior to adoption or use of things such as internet contact forms, rates notices, application forms of whatsoever nature, or written requests by which personal information is collected by Council, they will be vetted and approved by the Privacy Officer.

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

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

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

HPP2 - Information must be Relevant, Not Excessive, Accurate and Not Intrusive:

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.

HPP3 - Collection to be from the Individual Concerned:

Council will only collect health information directly from the individual the information concerns, unless it is unreasonable or impractical for Council to do so.

HPP4 - Individual to be Made Aware of Certain Matters:

Council will tell the person why the health information is being collected, what will be done with it, who else might see it and what the consequences are if the person decides not to provide it.

Council will also tell the person how he or she can see and correct the health information.

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If Council collects health information about a person from someone else, Council will take reasonable steps to ensure that the subject of the information is aware of the above points.

HPP5 - Retention and Security:

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

HPP6 - Information about Health Information Held by Organisations:

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

- whether the organisation holds health information, and
- whether the organisation holds health information relating to that individual, and
- if the organisation holds health information relating to that individual:
 - the nature of that information
 - the main purposes for which the information is used, and
 - that person's entitlement to request access to the information.

HPP7 - Access to Health Information:

Any person will be able to ascertain whether Council holds their health information by completing an Application for Access to Council Information Form. This will be processed by the Access to Information Officer. This may mean that the application for access to health information may be dealt with similar to or the same as an application made pursuant to the GIPA Act.

HPP8 - Amendment of Health Information:

Any person who is unhappy with the accuracy or acceptable use of their health information kept by Council, may request amendments be made to that information by writing to the General Manager.

Council has an obligation to take such steps to amend personal information where necessary. If Council decides that it will not amend the information, it must add the additional information, so it can be read with the existing information and notify the person making the application. The person to whom the information relates is entitled to have the recipients of that information notified of the amendments made by Council.

HPP8 is subject to the provisions of the GIPA Act.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be treated in accordance with Council's "Complaint Handling Procedures".

Any alterations that are or could be the subject of a customer complaint or grievance will be handled in accordance with Part 6 of this Plan.

HPP9 – Accuracy:

Council will make sure that the health information is relevant and accurate before using it.

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HPP10 - Use of Health Information:

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

HPP 11 - Disclosure of Health Information:

Council will only disclose health information under the following circumstances:

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

HPP12 – Identifiers:

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

HPP13 – Anonymity:

Council will provide health services anonymously where it is lawful and practical.

HPP14 - Transborder Data Flows and Data Flow to Commonwealth Agencies:

Council will only transfer personal information out of New South Wales if the following requirements are met:

- the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles for fair handling of the information that are substantially similar to the HPPs; or
- the individual consents to the transfer; or
- the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or
- the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
- 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 organisation 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
- the organisation has taken reasonable steps to ensure that the information that it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the HPPs; or
- the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.

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HPP15 - Linkage of Health Records:

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

6. Procedure for Dealing with Complaints in Relation to Personal Information and Health Information:

Where a person who has requested information is aggrieved by the conduct of Council in the following circumstances:

- Contravention of an IPP and/or HPP that applies to Council;
- Contravention of the Code;
- Disclosure of personal or health information kept on a public register;

That person may apply for a Review of Certain Conduct.

The application for review must be in writing and addressed to:

General Manager

Manly Council

PO Box 82

MANLY NSW 1655

The application must be lodged **within six (6) months** from the time the applicant **first became aware of the conduct** (the subject of the application).

The application will be dealt with by the Public Officer, who will consider any relevant material submitted by either the applicant or the Privacy Commissioner.

The **review will be completed as soon as reasonably practicable or within sixty (60) days** from receipt of the application for review. Following completion of the review, Council may do one or more of the following:

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

As soon as practicable or within fourteen (14) days of the completion of the review, Council will notify the applicant in writing of:

- i) the findings and the reasons for those findings;
- ii) any proposed actions to be taken by Council; and
- iii) the right of the applicant to have those findings and the Council's proposed action, reviewed by the Administrative Decisions Tribunal.

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7. Implementation of the Privacy Management Plan

Training Seminars/Induction:

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

Councillors, all staff of the Council including staff of council businesses, and members of council committees should be acquainted with the general provisions of the PPIP Act, the HRIP Act and in particular, the IPPs, the HPPs, the Public Register provisions, the Code, this Plan and any other applicable Code of Practice.

8. Other Relevant Matters:

8.1 Contracts with Consultants and Other Private Contractors:

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

8.2 Confidentiality:

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

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

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

8.3 Misuse of Personal or Health Information:

Section 664 of the LG Act makes it an offence for anyone to disclose information except in accordance with that section.

Part 8 of the HRIP Act contains offences dealing with the misuse of health information.

Part 8 of the PPIP Act contains offences dealing with the misuse of personal information.

Whether or not a particular disclosure is made with lawful excuse is a matter that requires legal opinion from case to case.

8.4 Regular Review of the Collection, Storage and Use of Personal or Health Information:

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

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9. Reporting

Manly Council will provide all information required to fulfill its statutory obligations as outlined in the Acts and Regulations, including the GIPA Act, PIPP Act, HRIP Act and the LG Act.

10. Plan Review:

This Plan is subject to regular review at a maximum interval of **two years**.

Any recognised change to relevant legislation; or directives or guidelines issued by agencies including the NSW Ombudsman and the Department of Local Government; or to Manly Council's related guidelines and procedures or practices may activate an immediate review of this policy to ensure it remains current and aligned to best practice policies.

11. Further Information:

For assistance in understanding the processes under the PPIP Act and HRIP Act, please contact the Council or the Office of the Privacy Commissioner NSW.

12. Definitions:

13. Relevant References and Legislation:

Manly Council Access to Information Policy, procedures and guidelines
Children and Young Persons (Care and Protection) Act 1998
Environmental Planning and Assessment Act 1979
Government Information (Public Access) Act 2009
Government Information (Public Access) Regulation 2009
Health Records and Information Privacy Act 2002
Impounding Act 1993
Local Government Act 1993
Manly Council Code of Conduct
Manly Council Complaints Management Policy and procedures
Manly Council Procedure for Misconduct Complaints
Manly Council Records Management Policy, procedures and guidelines
Privacy Code of Practice for Local Government
Privacy and Personal Information Protection Act 1998
Protection of the Environment (Operations) Act 1997
State Records Act 1998

ATTACHMENT 2

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14.0 Revision Schedule

Minute No	Date of Issue	Action	Author	Checked by