

# NOTICE OF ORDINARY MEETING

## 9 APRIL 2024



The Mayor and Councillors attendance is respectfully requested:

Mayor: R Palmer (Chair).

Councillors: L Anderson, G Arnott, M Bailey, C Doohan, G Dunkley, P Francis, P Kafer, S Tucker, J Wells.

### SCHEDULE OF MEETINGS

TIME	ITEM	VENUE
5:30pm:	Public Access (if applied for)	Council Chambers
Followed by:	Ordinary Meeting	Council Chambers

### Please Note:

In accordance with the NSW Privacy and Personal Information Protection Act 1998, you are advised that all discussion held during the Open Council meeting is public information. This will include any discussion involving the Mayor, a Councillor, staff member or a member of the public. All persons present should withhold from making public comments about another individual without seeking the consent of that individual in the first instance. Should you have any questions concerning the privacy of individuals at the meeting, please speak with the Governance Section Manager or the General Manager prior to the meeting.

Please be aware that Council webcasts its Open Council meetings via its website. All persons should refrain from making any defamatory remarks. Council accepts no liability for any defamatory remarks made during the course of the Council meeting.

For the safety and wellbeing of the public, no signs, placards or other props made from material other than paper will be permitted in the Council Chamber. No material should be larger than A3 in size.

Food and beverages are not permitted in the Council Chamber.

# INDEX

## SUBJECT

## PAGE NO

### **MOTIONS TO CLOSE ..... 14**

1. MAYORAL MINUTE – MOTION TO CLOSE ..... 15
1. MOTION TO CLOSE ..... 16

### **COUNCIL REPORTS..... 17**

1. PORT STEPHENS DEVELOPMENT CONTROL PLAN – CHAPTER B5 FLOODING ..... 18
2. DRAFT INTEGRATED PLANNING AND REPORTING DOCUMENTS AND FEES AND CHARGES ..... 54
3. POLICY REVIEW: CASH INVESTMENT POLICY ..... 58
4. POLICY REVIEW: COMPLAINT HANDLING..... 73
5. POLICY REVIEW: PECUNIARY INTEREST RETURNS ..... 95
6. POLICY REVIEW: WORKING TOGETHER AND PROVISION OF INFORMATION ..... 104
7. PRIVACY MANAGEMENT PLAN ..... 115
8. COUNCILLOR PROFESSIONAL DEVELOPMENT COURSE..... 198
9. INFORMATION PAPERS ..... 201

### **INFORMATION PAPERS ..... 202**

1. DESIGNATED PERSONS RETURN ..... 203
2. DELEGATIONS REPORT ..... 204
3. COUNCIL RESOLUTIONS ..... 206

### **CONFIDENTIAL ..... 214**

1. MAYORAL MINUTE – GENERAL MANAGER’S CONTRACT OF EMPLOYMENT
1. LEASE - 113 BEAUMONT STREET, HAMILTON

## **BUSINESS**

1) Opening meeting.

2) Acknowledgement of Country

We acknowledge the Worimi people as the original Custodians and inhabitants of Port Stephens. We acknowledge and pay respects to Worimi elders past and present. May we walk the road to tomorrow with mutual respect and admiration as we care for the beautiful land and waterways together.

3) Prayer

We recognise the rich cultural and religious diversity in Port Stephens and pay respect to the beliefs of all members of our community, regardless of creed or faith.

4) Apologies and applications for a leave of absence by Councillors.

5) Disclosures of interests.

6) Confirmation of minutes Ordinary Meeting of 26 March 2024.

7) Mayoral minute(s) – if submitted.

8) Motions to close meeting to the public – if submitted.

9) Reports to Council.

10) General Manager's reports – if submitted.

11) Questions with Notice – if submitted.

12) Questions on Notice.

13) Notices of motions – if submitted.

14) Rescission motions – if submitted.

15) Confidential matters – if submitted.

16) Conclusion of the meeting.

### **Statement of Ethical Obligations**

The Mayor and Councillors are reminded that they remain bound by the Oath/Affirmation of Office made at the commencement of this Council term to undertake their civic duties in the best interests of the people of Port Stephens and Port Stephens Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act 1993 or any other Act, to the best of their skill and judgement.

The Mayor and Councillors are also reminded of the requirement for disclosure of conflicts of interest in relation to items listed for consideration on the Agenda or which are considered at this meeting in accordance with the Code of Meeting Practice and Code of Conduct.

## **PRINCIPLES FOR LOCAL GOVERNMENT**

Port Stephens Council is a local authority constituted under the Local Government Act 1993. The Act includes the Principles for Local Government for all NSW Councils.

The object of the principles for councils is to provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.

### **Guiding principles for Council**

#### **1) Exercise of functions generally**

The following general principles apply to the exercise of functions by Council. Council should:

- a. provide strong and effective representation, leadership, planning and decision-making.
- b. carry out functions in a way that provides the best possible value for residents and ratepayers.
- c. plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- d. apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- e. work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- f. manage lands and other assets so that current and future local community needs can be met in an affordable way.
- g. work with others to secure appropriate services for local community needs.
- h. act fairly, ethically and without bias in the interests of the local community.
- i. be responsible employers and provide a consultative and supportive working environment for staff.

#### **2) Decision-making**

The following principles apply to decision-making by Council (subject to any other applicable law). Council should:

- a. recognise diverse local community needs and interests.
- b. consider social justice principles.
- c. consider the long term and cumulative effects of actions on future generations.
- d. consider the principles of ecologically sustainable development.
- e. Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

3) Community participation

Council should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

**Principles of sound financial management**

The following principles of sound financial management apply to Council. Council should:

- a. spend responsible and sustainable, aligning general revenue and expenses.
- b. invest in responsible and sustainable infrastructure for the benefit of the local community.
- c. have effective financial and asset management, including sound policies and processes for the following:
- d. performance management and reporting,
- e. asset maintenance and enhancement,
- f. funding decisions,
- g. risk management practices.
- h. have regard to achieving intergenerational equity, including ensuring the following:
  - (i) policy decisions are made after considering their financial effects on future generations,
  - (ii) the current generation funds the cost of its services.

**Integrated planning and reporting principles that apply to Council**

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by Council. Council should:

- a. identify and prioritise key local community needs and aspirations and consider regional priorities.
- b. identify strategic goals to meet those needs and aspirations.
- c. develop activities, and prioritise actions, to work towards the strategic goals.
- d. ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- e. regularly review and evaluate progress towards achieving strategic goals.
- f. maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- g. collaborate with others to maximise achievement of strategic goals.
- h. manage risks to the local community or area or to the council effectively and proactively.
- i. make appropriate evidence-based adaptations to meet changing needs and circumstances.

## PORT STEPHENS COMMUNITY STRATEGIC PLAN

The Local Government Act requires Council to adopt a Community Strategic Plan (10+ years). The Plan includes a Delivery Program (4 years), Annual Operational Plan and a Resource Strategy, it also includes the Council's budget.

The Community Strategic Plan is organised into 4 focus areas:

**OUR COMMUNITY** – An accessible and welcoming community respecting diversity, heritage and culture.

**OUR PLACE** – A liveable and connected place supporting community wellbeing and local economic growth.

**OUR ENVIRONMENT** – Port Stephens' environment is clean and green, protected and enhanced.

**OUR COUNCIL** – Port Stephens Council leads, manages and delivers valued community services in a responsible way.

## BUSINESS EXCELLENCE

Port Stephens Council is a quality and a customer service focused organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on 9 principles.

These outcomes align with the following Business Excellence principles:

- 1) Clear direction and mutually agreed plans enable organisational alignment and focus on achievement of goals.
- 2) Understanding what customers and other stakeholders value, now and in the future, enables organisational direction, strategy and action.
- 3) All people work in a system. Outcomes are improved when people work on the system and its associated processes.
- 4) Engaging people's enthusiasm, resourcefulness and participation improves organisational performance.
- 5) Innovation and learning influence the agility and responsiveness of the organisation.
- 6) Effective use of facts, data and knowledge leads to improved decisions.
- 7) Variation impacts predictability, profitability and performance.
- 8) Sustainable performance is determined by an organisation's ability to deliver value for all stakeholders in an ethically, socially and environmentally responsible manner.
- 9) Leaders determine the culture and value system of the organisation through their decisions and behaviour.

## MEETING PROCEDURES SUMMARY

**Starting time** – All meetings must commence within 30 minutes of the advertised time.

**Quorum** – A quorum at Port Stephens Council is 6.

### **Declarations of Interest**

**Pecuniary** – Councillors who have a pecuniary interest must declare the interest, not participate in the debate and leave the meeting.

**Non-Pecuniary** – Councillors are required to indicate if they have a non-pecuniary interest, should a Councillor declare a significant non-pecuniary they must not participate in the debate and leave the meeting. If a Councillor declares a less than significant non-pecuniary they must state why no further action should be taken. Councillors may remain in the meeting for a less than significant non-pecuniary.

**Confirm the Minutes** – Councillors are able to raise any matter concerning the Minutes prior to confirmation of the Minutes.

**Public Access** – Each speaker has 5 minutes to address Council with no more than 2 for and 2 against the subject.

### **Motions and Amendments**

**Moving Recommendations** – If a Committee recommendation is being moved, ie been to a Committee first, then the motion must be moved and seconded at Council prior to debate proceeding. A Councillor may move an alternate motion to the recommendation.

**Amendments** – A Councillor may move an amendment to any motion however only one amendment or motion can be before Council at any one time, if carried it becomes the motion.

**Seconding Amendments** – When moving an amendment, it must be seconded or it lapses.

**Incorporating Amendments** – If a motion has been moved and the mover and seconder agree with something which is being moved as an amendment by others, they may elect to incorporate it into their motion or amendment as the case may be.

**Voting Order** – When voting on a matter the order is as follows:

- 1) Amendment (If any)
- 2) Foreshadowed Amendments – (If any, and in the order they were moved)
- 3) Motion

**NB – Where an amendment is carried, there must be another vote on the amendment becoming the motion.**

**Voting** – an item is passed where a majority vote for the subject. If the voting is tied the Chairperson has a second (casting) vote which is used to break the deadlock.

**Closed Session** – There must be a motion to close a meeting. Prior to voting on the motion the chairperson will invite the gallery to make representations if they believe the meeting shouldn't be closed. Then Councillors vote on the matter. If adopted the gallery should then be cleared and the matter considered in closed session. Any decision taken in session closed is a resolution. There must be a motion to reopen the Council meeting to the public. If decision occurred in 'closed session', the meeting is advised of the resolution in 'open session'.

**Procedural Motion** – Is a motion necessary for the conduct of the meeting, it is voted on without debate, eg defer an item to the end of the meeting (however, to defer an item to another meeting is not a procedural motion), extend the time for a Councillor to speak etc.

**Points of Order** – when any of the following are occurring or have occurred a Councillor can rise on a 'Point of Order', the breach is explained to the Chairperson who rules on the matter.

A Point of Order can be raised where:

- 1) There has been any non-compliance with procedure, eg motion not seconded etc.
- 2) A Councillor commits an act of disorder:
  - a. Contravenes the Act, any Regulation in force under the Act, the Code of Conduct or this Code.
  - b. Assaults or threatens to assault another Councillor or person present at the meeting.
  - c. Moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or Committee, or address or attempts to address the Council or Committee on such a motion, amendment or matter.
  - d. Insults or makes personal reflections on or imputes improper motives to any other Councillor, any staff member or alleges a breach of Council's Code of Conduct.
  - e. Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into disrepute.



## **Declarations of Conflict of Interest – Definitions**

**Pecuniary interest** is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in Clause 7 of the Code of Conduct.

**Non Pecuniary interests** are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Code of Conduct. These commonly arise out of family or personal relationships or involvement in sporting, social or other cultural groups and associations and may include an interest of financial nature.

The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the general manager. Therefore, there is no requirement for Councillors or the General Manager to disclose a conflict of interest in such a matter.

The political views of a Councillor do not constitute a private interest.



## Form of Special Disclosure of Pecuniary Interest

1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

### Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

**ORDINARY COUNCIL - 9 APRIL 2024**

Special disclosure of pecuniary interests by [full name of councillor]

in the matter of [insert name of environmental planning instrument]

which is to be considered at a meeting of the PORT STEPHENS COUNCIL

to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to the councillor [Tick or cross one box.]	<input type="checkbox"/> The councillor has an interest in the land (eg is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest <sup>1</sup>	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) <sup>2</sup> [Tick or cross one box]	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control [Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]	

<sup>1</sup> Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

<sup>2</sup> A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

**ORDINARY COUNCIL - 9 APRIL 2024**

Proposed change of zone/planning control [Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]	
Effect of proposed change of zone/planning control on councillor or associated person [Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]	

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Mayor/Councillor's signature \_\_\_\_\_

Date \_\_\_\_\_

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]



## Declaration of Interest form

Agenda item No. \_\_\_\_\_

Report title \_\_\_\_\_

Mayor/Councillor \_\_\_\_\_ declared a

Tick the relevant response:

<input type="checkbox"/>	<b>pecuniary</b> conflict of interest
<input type="checkbox"/>	<b>significant</b> non pecuniary conflict of interest
<input type="checkbox"/>	<b>less than significant</b> non- pecuniary conflict of interest

in this item. The nature of the interest is \_\_\_\_\_

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**If a Councillor declares a less than significant conflict of interest and intends to remain in the meeting, the councillor needs to provide an explanation as to why the conflict requires no further action to manage the conflict. (Attach a separate sheet if required.)**

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**OFFICE USE ONLY:** (Committee of the Whole may not be applicable at all meetings.)

Mayor/Councillor left the Council meeting in Committee of the Whole at \_\_\_\_\_pm.

Mayor/Councillor returned to the Council meeting in Committee of the Whole at \_\_\_\_\_ pm.

Mayor/Councillor left the Council meeting at \_\_\_\_\_ pm.

Mayor/Councillor returned to the Council meeting at \_\_\_\_\_ pm.

# MOTIONS TO CLOSE

# MAYORAL MINUTE MOTION TO CLOSE

ITEM NO. 1

FILE NO: 22-37

## MOTION TO CLOSE MEETING TO THE PUBLIC

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### RECOMMENDATION:

- 1) That pursuant to section 10A(2)(a) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Mayoral Minute Confidential Item 1 on the Ordinary Meeting agenda namely **General Manager's Contract of Employment**.
- 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include matters and information relating to personnel matters concerning particular individuals (other than councillors).
- 3) That the report of the closed part of the meeting remain confidential.

ITEM NO. 1

FILE NO: 24/70209  
EDRMS NO: A2004-0888

**MOTION TO CLOSE**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (d)i of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Lease - 113 Beaumont Street, Hamilton**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
  - commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.



# COUNCIL REPORTS

ITEM NO. 1

FILE NO: 24/47405  
EDRMS NO: PSC2023-04100

**PORT STEPHENS DEVELOPMENT CONTROL PLAN – CHAPTER B5 FLOODING**

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
DIRECTORATE: COMMUNITY FUTURES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the submissions received during the exhibition period **(ATTACHMENT 1)**.
  - 2) Endorse the Port Stephens Development Control Plan 2014 (DCP) Chapter B5 Flooding **(ATTACHMENT 2)**.
  - 3) Provide public notice that the amendment to the Port Stephens Development Control Plan 2014 (DCP) Chapter B5 Flooding has been approved in accordance with the Environmental Planning and Assessment Regulation 2021.
- 

**BACKGROUND**

The purpose of this report is to advise Council of the outcomes of the consultation undertaken on the draft Port Stephens Development Control Plan 2014 (DCP) Chapter B5 Flooding **(ATTACHMENT 2)** (the 'amendment') and to seek Council endorsement to make the amendment.

The amendment seeks to update the DCP to restrict most development in high risk flood areas.

The proposed changes are in response to the outcomes of the NSW Flood Inquiry and a recent Land and Environment Court (LEC) decision (Ward v Port Stephens Council [2023] NSW LEC 1493) (the Ward decision).

The NSW Flood Inquiry recommends actions for councils and the State government to discourage certain development in high risk flood areas.

The Ward decision overturned a refusal of a dwelling in a high hazard floodway and the judgement identified a number of errors and inconsistencies in Chapter B5 Flooding in the DCP.

To respond to the Inquiry and the Ward decision, this report recommends the DCP be amended to:

- Prohibit most development in low and high hazard floodways (except for fill and farm buildings)
- Rectify drafting errors and inconsistencies in the DCP

## ORDINARY COUNCIL - 9 APRIL 2024

- Make minor changes to the objectives of the Flooding Chapter to align with the outcomes of the NSW Flood Inquiry
- Update definitions to reflect new terminology (**ATTACHMENT 3**).

A detailed explanation of the amendments is provided within (**ATTACHMENT 4**).

The proposed changes bring the DCP in line with the approach taken by other local councils, including Lake Macquarie City Council, Maitland City Council, Cessnock City Council and City of Newcastle Council.

At its meeting on 28 November 2023, Minute No. 276 (**ATTACHMENT 5**), Council endorsed the draft amendment for exhibition.

The draft was publicly exhibited for 44 days from Thursday 30 November 2023 to Monday 12 February 2024, in accordance with the Environmental Planning and Assessment Regulations 2021 (NSW).

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and safe place to live	Program to develop and implement Council's key planning documents

### FINANCIAL/RESOURCE IMPLICATIONS

There are no significant financial or resource implications for Council as consequence of the proposed recommendations.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

#### Environmental Planning and Assessment Act 1979 (EP&A Act)

Division 3.6 of the EP&A Act relates to development control plans. Should Council resolve to proceed with the amendments, all necessary matters in preparing the plan will be carried out in accordance with the EP&A Act.

Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)

Division 2 of Part 2 of the EP&A Regulation specifies the requirements for public participation. The recommendation is in accordance with the provisions of the EP&A Regulations.

Port Stephens Development Control Plan 2014 (DCP)

This report recommends the endorsement of the proposed amendments to DCP Chapter B5 Flooding to introduce objectives and development controls for future development to prohibit the approval of residential development in floodway's.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council could be encouraging development that is inconsistent with the NSW Flood Risk Management Manual and the limited legal indemnity relating to decisions made by Council in relation to flooding under Section 733 of the Local Government Act 1993 may not be available.	Low	Accept the recommendation.	Yes
There is a risk that approving development in floodway's could present an unacceptable and unnecessary risk to life for the occupants.	Low	Accept the recommendation.	Yes

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that prohibiting the approval of residential development in floodway's could give less discretion for rare instances where a dwelling may be suitable in a floodway, such as where a dwelling is proposed to be raised on a fill pad above the Probable Maximum Flood level and flood free evacuation is available.	Low	Accept the recommendation.  Section 4.15(3A)(b) of the EP&A Act allows flexibility in the application of development control plan provisions if a reasonable alternative solution can be provided. For example an existing dwelling may be replaced by a new dwelling that lowers the flood risk.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed amendments to DCP Chapter B5 Flooding are considered to have positive social, environmental and economic implications by ensuring that new development does not present:

- New flood risk to communities, which could cause long-term unsustainable strain on emergency services personnel by increasing the number of dwellings in floodways that cannot be safely evacuated.
- Landowners being subject to financial implications caused by unaffordable insurance premiums or dwellings are considered uninsurable.
- Landowners being subject to financial implications of temporary accommodation when displaced, additional food costs preparing for isolation, and lost wages during isolation.
- Landowners and or occupiers being subject to undue stress, including emotional stress, caused by evacuation warnings, actual evacuation attempts and when isolated by floodwaters.

## CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategic Planning unit to identify and consider any issues prior to exhibition.

### Internal

- Assets Section
- Development and Compliance Section

### External

The amendment was publicly exhibited for 44 days from Thursday 30 November 2023 to Monday 12 February 2024 in accordance with the Environmental Planning and Assessment Regulations 2021.

During the public exhibition period, 3 submissions were received from community groups. The submissions are summarised and addressed in **(ATTACHMENT 1)**.

The submissions raised concern that:

- Council permits some development on flood prone land, including flood fringe, flood storage and minimal risk flood prone land.
- Climate change is not adequately accounted for in Council's modelling.
- People often make poor choices under stress (with reference to flood evacuation).

It was also explained that the recommended changes are in line with the NSW Government Flood Risk Management Manual which guides local government in understanding, planning and managing flood risk in local communities.

As such, no post-exhibition changes have been made to the amendment.

### **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

### **ATTACHMENTS**

- 1) Draft DCP Chapter B5 Flooding - Submissions Table. [↓](#)
- 2) Draft DCP Chapter B5 Flooding. [↓](#)
- 3) Draft DCP Glossary - B5 Flooding. [↓](#)
- 4) DCP Chapter B5 Flooding - Explanation of Amendments. [↓](#)
- 5) Minutes No. 276, 28 November 2023. [↓](#)

### **COUNCILLORS' ROOM/DASHBOARD**

- 1) Unredacted submissions (available via the Councillors' Dashboard).

Note: Any third party reports referenced in this report can be uploaded to the Councillors' Dashboard upon request.

### **TABLED DOCUMENTS**

Nil.

**ITEM 1 - ATTACHMENT 1 DRAFT DCP CHAPTER B5 FLOODING - SUBMISSIONS TABLE.**

**Submission Table: Draft Port Stephens Development Control Plan 2014  
Chapter B5 Flooding**

No.	Author of submission	Comment	Council response
1	Tomaree Rate Payers Association Inc. (TRRA) – No. 1	The submission supports the draft DCP as the proposed changes appear to be a sensible response to external factors that will strengthen Council's ability to respond appropriately to applications for development in floodways.	Noted.
		The submission writes that in the past Councillors have overridden advice of planning staff and approved development in floodways which has created a risk to the lives of residents and emergency service workers.	Noted.
		The submission welcomes the changes.	Noted.
2	Voice of Wallalong and Woodville (VOWW)	The submission objects to the draft DCP and writes that it is a generic document that does not take into consideration that all rivers have different flooding profiles and outcomes.	The introductory section of the existing DCP explains that flood impacts are assessed based on information within a Council issued Flood Certificate. Flood Certificates are prepared using catchment specific flood modelling to identify flood category and flooding characteristics of a specific parcel of land. The flood modelling used is not generic, rather, it is specific to an individual parcel/s of land and the localised source of the flooding such as a river or drain.
		The submission queries if historic flood level data is available for all river systems in the LGA that could aid in decision making.	The flood modelling used by Council has been prepared in accordance with the Flood Risk Management Manual (FRMM). It uses previous

ITEM 1 - ATTACHMENT 1  
SUBMISSIONS TABLE.

## DRAFT DCP CHAPTER B5 FLOODING -

			flood events to model the possibility of a larger flood thereby basing itself on higher quantities that may be expected. The model makes allowances for rain fall intensity by using all the data from the last 100 years and takes into account items such as changes in land heights and the levee, from which to make risk based decisions.
		The submission writes that it does not believe the document goes far enough in outlining what cannot be included in future development on floodplain areas.	The DCP amendment significantly restricts what can be built in the floodplain. It has updated controls to align with the outcomes of the recent NSW Flood Inquiry and to be consistent with the FRMM.
		The submission is concerned that Figure BI: 'Suitable land uses by flood hazard category', lists every category of development, apart from low hazard floodway and high hazard floodway, as suitable for development. Reference is made to Figure BH: 'Flood hazard categories', to demonstrate Williams River flood characteristics and that some additional categories of development should not be considered suitable in these areas.	In order to eliminate subjectivity and ambiguity, the draft DCP has tightened controls by removing options to provide performance based solutions which could demonstrate land in floodways as suitable for development. Any development that is identified as 'suitable' must also satisfy strict development controls which manage risk to life and property in accordance with the FRMM. Council can still refuse any development on these other parts of the flood planning area based on a merit assessment.
		The submission expresses concern that Council staff feel it is acceptable to build a residential subdivision or dwelling house on flood fringe, flood storage or minimal risk flood prone	All proposed development on flood prone land is subject to strict development controls which manage risk to life and property from flooding, consistent with the FRMM.



ITEM 1 - ATTACHMENT 1  
SUBMISSIONS TABLE.

## DRAFT DCP CHAPTER B5 FLOODING -

	land. It writes that Council should acknowledge the risks are too great and make it clear to prospective developers that floodplains are no places to propose housing subdivisions or non-residential subdivisions.	The proposal is then further assessed by Council staff to ensure it satisfies provisions in the Port Stephens Local Environment Plan (LEP). Port Stephens is currently undertaking an accumulative flood study on the Lower Hunter, together with Newcastle and Maitland City Councils, to assess flood impacts across the whole floodplain. This study will provide Council with additional data from which to make informed decisions.
	The submission expresses concern that any development is deemed acceptable on flood prone land, albeit with some limited development controls. It claims some of the development controls are unrealistic and that if so many are needed then development should be ruled out in the first place.	The existing DCP includes a number of strict development controls that apply, dependent on the flood hazard category of the land. Development controls are stricter where the hazard is greater, consistent with the FRMM. Where compliance with development controls cannot be achieved Council may choose to refuse the development. This approach is consistent with the majority of councils in NSW and enables limited development only where risks and hazards can be appropriately managed.
	The submission is concerned with the consequences of climate change on development in flood storage or flood fringe areas.	Climate change is accounted for in the flood modelling used by Council.
	The submission considers the control B5.3 "Development must meet the minimum FFL as specified in Figure BJ" as unrealistic, as once a	This control applies to the assessment of proposed new development only.

ITEM 1 - ATTACHMENT 1  
SUBMISSIONS TABLE.

## DRAFT DCP CHAPTER B5 FLOODING -

	house is built it is difficult to change the floor level.	
	Also in reference to B5.3, the submission queries needing to be concerned with the finished surface areas of open space car parking, carports and driveways.	B5.3 of the existing DCP specifies finished floor levels for various types of development, based on the developments likelihood to cause risk to life and property. Residential accommodation and sensitive and vulnerable development types, such as childcare centres are afforded the highest level of protection as they present a greater risk to life from flooding. The finished floor level for these land uses are above the 1% AEP flood level to account for a factor of safety. Car parking and other similar development is a less sensitive development on the flood plain and therefore can be constructed at a lower level, consistent with the FRMM.
	In reference to B5.5 "Fencing on flood prone land should be stable... and not obstruct the flow of floodwater' the submission writes that only barbed wire would be suitable as it does not hold the debris of fast flowing water.	The existing DCP prescribes fencing material should not include non-permeable materials and indicates water must be able to flow through it, to avoid obstruction of flow and the creation of debris. No changes are proposed to this clause in the DCP.
	In relation to B5.8, "items that may wash away during flood events", the submission queries if it is feasible to require landowners to tie some of these items down.	Engineers have recommended this control as a feasible requirement.
	In reference to the B5.A objective "to treat floodplains as an asset", the submission notes it may sound like a logical	Noted. The objective in B5.A of the Draft DCP is taken directly from the findings of the NSW Flood Inquiry.

ITEM 1 - ATTACHMENT 1  
SUBMISSIONS TABLE.

## DRAFT DCP CHAPTER B5 FLOODING -

		aspiration, but floodplains are already an agricultural asset to farmers, a financial asset to the LGA, and an environmental asset to wetlands.	
		In reference to the B5.A objective "ensuring that the use and development of flood prone land includes risk consequences that are manageable", the submission notes the term 'manageable' could be open-ended which would leave the door open to developer interpretation and enable development in inappropriate areas.	B5.A is an objective which guides the development controls in the following section. It is the development controls that provide a clear framework for achieving development that is consistent with the objective, thereby removing ambiguity regarding what risk consequences are considered 'manageable'. As noted above, the objective in B5.A of the Draft DCP is taken directly from the findings of the NSW Flood Inquiry.
		In reference to overland flow paths in B5.16, the submission writes that developers only model up to 60-minute rain events and almost no consideration is given to more severe weather events such as those that occurred in the LGA in 2007 and 2015. It requests that consideration and management actions need to be made for creeks and gullies which can quickly experience flash flooding.	All storm events, up to and including 1% AEP storm events and all durations from 5 minutes to 72 hours, are required to be considered. The storm event that produces the highest peak flood level and peak flows will be selected as the critical storm event in an assessment. The critical duration of the storm event varies with catchment size (smaller catchments have shorter critical storm durations and larger catchments have longer critical durations).  Council's flood maps show all overland flowpath areas and provide information on the flood level and hazard category. A flood risk assessment for events up to the PMF are required for proposed developments

ITEM 1 - ATTACHMENT 1  
SUBMISSIONS TABLE.

## DRAFT DCP CHAPTER B5 FLOODING -

			that are located in high hazard areas such as creek and gullies. The draft DCP has this requirement under control B5.16.
		With regard to flood evacuation, the submission expresses concern that people often make poor choices under stress.	Noted. Concerns regarding impeded decision making during a flood event are highlighted in the FRMM. The draft DCP responds to this concern through controls that aim to prohibit dwellings in the most hazardous parts of the floodplain including floodways. This change recognises that even where flood controls are implemented, the risk remains too great on certain parts of the floodplain as there can be no guarantee that residents will strictly follow flood emergency response plans.
		In reference to clause 5.22 in the Standard Instrument - Principal Local Environmental Plan, the submission raised concern around operational capacity of the emergency services.	At its meeting on 28 November 2023, Council resolved to forward a planning proposal to DPHI for Gateway determination to insert Clause 5.22 into the Port Stephens LEP. Adopting the optional clause will allow council to ensure future development in flood prone areas is compatible with the level of risk which is to avoid cumulative impacts, protect the operational capacity of emergency responses, and avoid adverse effects of hazardous development during flood events
		The submission writes that flooding events in the West Ward are influenced by multi-river flooding, tidal influences and hydrology	Council's flood modelling considers the entire flood catchment, including floods from multiple rivers occurring at the same time. Section B5.8 of the existing

ITEM 1 - ATTACHMENT 1  
SUBMISSIONS TABLE.

## DRAFT DCP CHAPTER B5 FLOODING -

		changes due to mounding and vegetation clearing. It expresses concern for entrapment in these rural areas which become isolated in a 3-river flood and expresses concern that should new subdivisions be added to these floodplains, consideration for physical and mental stress and financial hardship must be made.	DCP requires applicants to prepare a flood impact and risk assessment to account for flood impacts caused by localised filling of land and other unnatural features that could change the direction of flow, velocity and depth of flood waters. The impacts of mental stress and financial hardship are acknowledged in the FRMM which is the guiding document for the drafting of the existing and draft DCP controls.
		The submission writes that definitions are not offered for the terms 'high' and 'low' with reference to 'hazard' and an assumption must be made that a 'high hazard floodway' is the river itself.	Council doesn't use reference to a river to restrict development in the DCP. Other legislation restricts development in a river. The DCP uses flood hazard categories to restrict development. Figure BH: 'Flood hazard categories' illustrates flood hazard categories and defines how flood waters occupy the surrounding areas. The hazard category (high or low) is defined based on flood depth and velocity, as modelled in a Council issued Flood Certificate and in accordance with the FRMM.
		The submission notes that mention has not been made in consideration of the environment surrounding the floodplain.	The existing DCP includes controls to manage potential impacts on the environment surrounding the floodplain, including controls that address storage of materials that may be potentially hazardous or polluting during a flood event.
		The submission expresses concern that the chapter	The installation of septic tanks is assessed and regulated in accordance

ITEM 1 - ATTACHMENT 1  
SUBMISSIONS TABLE.

## DRAFT DCP CHAPTER B5 FLOODING -

		does not address septic tanks.	with the <i>Local Government Act 1993</i> and Council's Development Assessment Framework (DAF) for onsite waste water management systems. The DAF includes flood planning controls that relate to septic tanks.
		The submission expresses concern for houses, on or near floodplains that are no longer able to be covered by insurance.	Noted.
		The submission references Lismore as an example of a city that has been subject to flooding deemed as acceptable as a result of precedents set with regard to changes in flooding.	Noted.
3	Tomaree Rate Payers Association Inc. (TRRA) – No. 2	The submission writes that the draft DCP seems to rely on historical data and definitions and risk models which may not be adequate in the context of climate change.	The flood modelling used by Council has been prepared in accordance with the Flood Risk Management Manual (FRMM), including accounting for climate change.
		The submission urges a presumption against any development that could place lives at risk if it is on land that is either at risk of inundation or to which access may be flooded.	The DCP strictly limits development in the floodplain.
		The submission comments that adaption and mitigation measures, such as buildings on flood mounds, should no longer be seen as sufficient to allow otherwise unsuitable development.	The FRMM supports development within certain parts of the floodplain where controls can be put in place to adequately mitigate risk to life and property from flooding. The existing and draft DCP has been prepared in accordance with the FRMM.
		The submission supports the submission received from VOWW.	Noted.

## B5

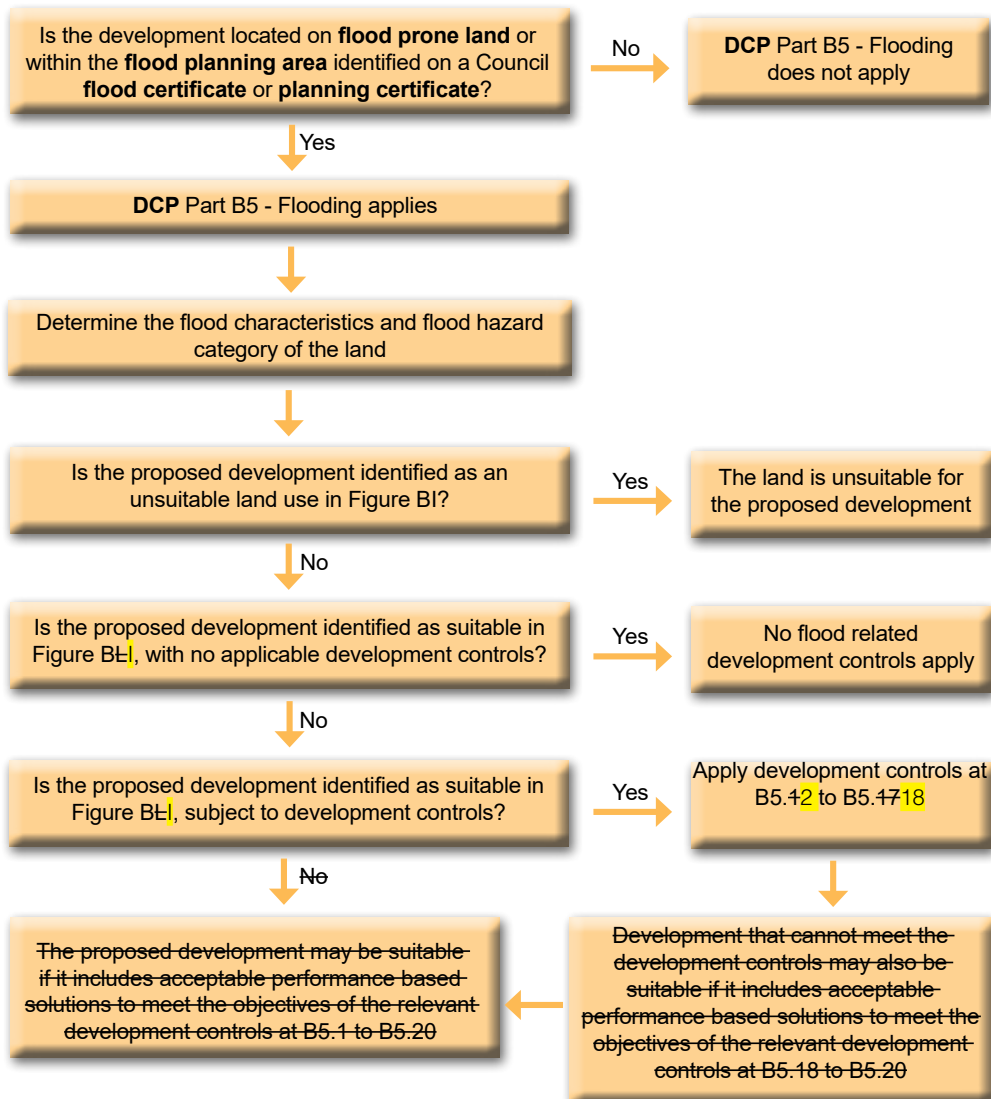
# B5 Flooding

## Application

This Part applies to all development on **flood prone land**

Refer to the flow chart at Figure BF to determine the assessment pathway for new development

**Figure BF: Determine the assessment pathway**



B5

How flood impacts are assessed

A **flood certificate** identifies the flood category and flooding characteristics of the land to inform the assessment of proposed development.

The **flood certificate** will describe the highest flood category applicable to the land (a combination of the **flood hazard** and the **hydraulic category**), as well as various flood levels (such as the **flood planning level** and the **probable maximum flood level**). Figure BG shows the possible flood categories and Figure BH shows how flood categories and flood levels reflect the landscape and the relationship between water depth and water velocity in a flood.

Land in the hydraulic categories **flood fringe**, **flood storage** and **floodway** will generally make up the visible **floodplain**, whilst **overland flow paths** feed into the **floodplain**. Consequently, the characteristics of **overland flow paths** are considered separately from other flood categories and are not detailed in Figure BH below.

A **flood certificate** may also identify land as '**minimal risk flood prone land**' where only minimal impacts are anticipated. The requirements that apply to these categories are detailed in this Part.

Figure BG: Flood categories

Hydraulic category	Flood hazard	
	Low hazard	High hazard
Flood Prone	Minimal Risk Flood Prone Land	
Flood Fringe	Low Hazard Flood Fringe	High Hazard Flood Fringe
Flood Storage	Low Hazard Flood Storage	High Hazard Flood Storage
Overland Flow Path	Low Hazard Overland Flow Path	High Hazard Overland Flow Path
Floodway	Low Hazard Floodway	High Hazard Floodway



## B5

Figure BH: Flood hazard categories: landscape

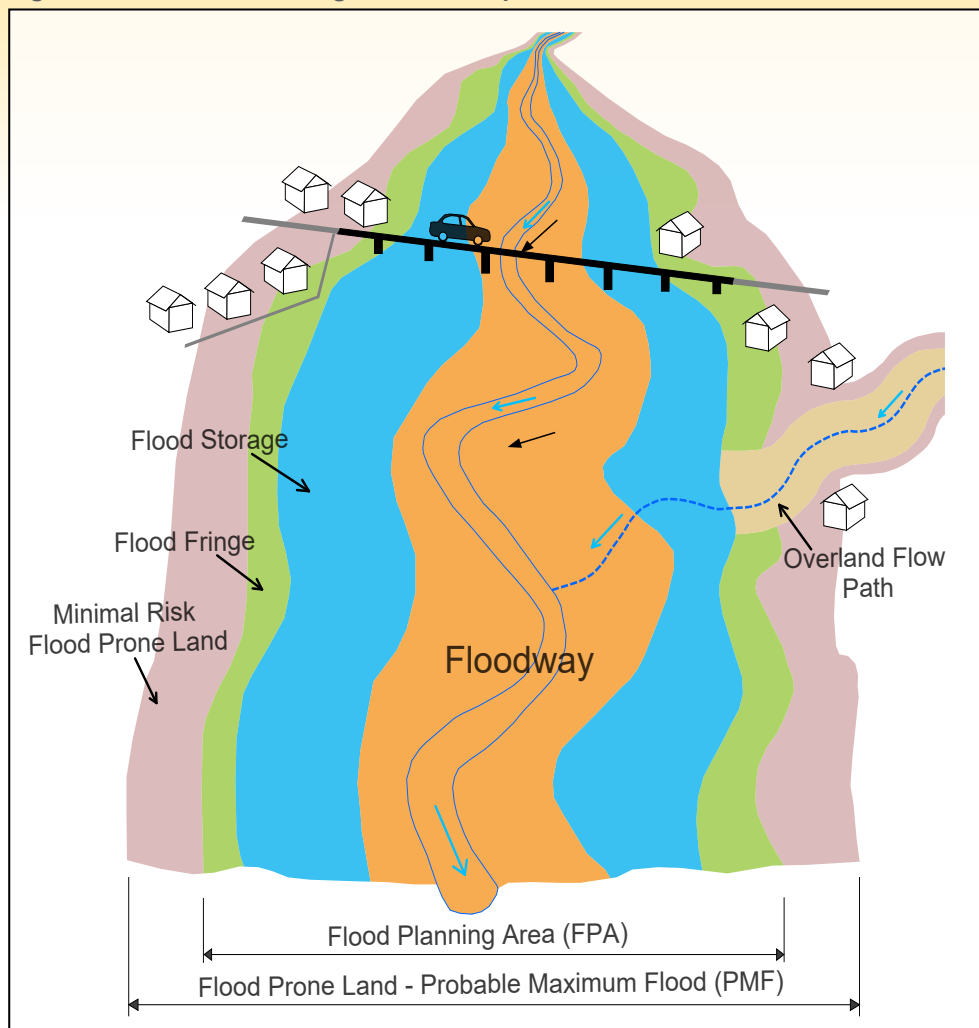
**Determining development suitability**

Figure BI below sets out whether or not different types of new development are considered suitable on land designated a particular flood hazard category (as identified on a **flood certificate**).

Most new development proposed on **flood prone land** will need to address the development controls in this Part to mitigate risks and be considered suitable (Refer to Figure BI below).

Where risks are assessed as low, such as where land is identified as '**minimal risk flood prone land**' on a **flood certificate**, the requirements for new development will be minimal and most new development on that land is considered suitable (Refer to Figure BI below).

## B5

In some instances the risks of new development are substantially higher and the ability to develop the land is less certain. In these instances, an applicant may prepare performance-based solutions to meet the objectives of the relevant development controls and demonstrate that the risks have been mitigated. If the solution cannot demonstrate acceptable mitigation of risk, the new development may be an unsuitable use of the land (Refer to Figure B1 below). In some instances the risks of new development are substantially higher and the land will be unsuitable for development. In these instances, the development will not be supported by Council.

**Figure B1: Suitable land uses by flood hazard category (as identified on a flood certificate)**

Development suitability										
	Flood Hazard Categories (as identified on a flood certificate)	Minimal Risk Flood Prone Land	Low Hazard Flood Fringe	High Hazard Flood Fringe	Low Hazard Flood Storage	High Hazard Flood Storage	Low Hazard Overland Flow Path	High Hazard Overland Flow Path	Low Hazard Floodway	High hazard Floodway
Development vulnerable to emergency response and critical infrastructure Sensitive and hazardous development		S	U	U	U	U	U	U	U	U
Residential accommodation (other than a dwelling house)		NA	S	S	S	S	S	S	U	U
Residential subdivision		NA	S	S	S	S	S	S	U	U
Dwelling house		NA	S	S	S	S	S	S	PB U	PB U
Farm buildings		NA	S	S	S	S	S	S	S	S
Fill		NA	S	S	S	S	S	S	S	S
Non-residential subdivision		NA	S	S	S	S	S	S	PB U	PB U
All other development		NA	S	S	S	S	S	S	PB U	PB U
Key										
U	Unsuitable land use on flood prone land									
NA	Suitable, no applicable development controls									
S	Suitable, subject to development controls									
PB	A performance-based solution may be provided to demonstrate that the proposed land use is suitable									

### B5.A Development on all flood prone land

#### Objectives

- To ensure development satisfies the provisions of the **LEP**.
- To provide detailed controls for the assessment of development proposed on **flood prone land** in accordance with the *Environmental Planning and Assessment Act 1979*.
- To ensure flood risk is considered as early as possible in the planning and development process, based on the best available flood information.

## B5

- To reduce the impact of flooding and flood liability on individual owners and occupiers of **flood prone land**.
- To recognise **flood prone land** as a valuable social, economic and environmental resource that should not be sterilised by inappropriate development. To treat floodplains as an asset, specialising in uses that are productive and minimise risk to life during major weather events.
- To ensure that the use and development of **flood prone land** includes risk consequences that are manageable.
- To implement the principles of the **NSW Government 'Floodplain Development Manual' 'Flood Risk Management Manual'** (as updated from time to time), **Construction of Buildings in Flood Hazard Areas (Australian Building Codes Board)** and Council's **Floodplain Risk Management Policy** and **flood hazard maps** as identified within Figure BF.

## Development controls

## Site selection

**B5.1** Development is in accordance with Figure BI.

Note: Development deemed unsuitable in accordance with Figure BI is not supported.

**B5.2** If multiple flood hazard categories are specified for a site on a **flood certificate**, the proposed development must be located on the land with the lowest flood risk.

## Finished floor level (FFL)

**B5.3** Development must meet the minimum **FFL** as specified in Figure BJ.

Note: The National Construction Code may provide minimum **FFLs** for some categories of development which prevail to the extent of any inconsistency with these controls.

The finished surface of open space car parking, carports and driveways should be designed having regard to vehicle stability, including consideration of depths and velocity during inundation by flood waters.

Figure BJ: Finished floor level

Development type	Required FFL
Development vulnerable to emergency-response, and critical infrastructure Sensitive and hazardous development	<b>Probable maximum flood (PMF) level</b>
Residential accommodation (including dwelling houses)	<ul style="list-style-type: none"> <li>Habitable rooms – <b>flood planning level</b></li> <li>Non-habitable rooms – <b>adaptable minimum floor level</b></li> <li>Flood refuge – <b>probable maximum flood Level</b> (see B5.44.15 to determine if a flood refuge is required)</li> </ul>
Subdivision	<b>Flood planning level</b>
Farm buildings	Onsite waster water level
Commercial premises	<ul style="list-style-type: none"> <li><b>Habitable rooms - flood planning level</b></li> <li>Non-habitable rooms - onsite waster water level</li> </ul>
Industrial premises	<ul style="list-style-type: none"> <li><b>Habitable rooms - flood planning level</b></li> <li>Non-habitable rooms - onsite waster water level</li> </ul>
Garages, open car parking spaces and carports	Current day 1% <b>AEP</b> flood level
Driveways and access	Current day 1% <b>AEP</b> flood level, or the <b>flood immunity</b> of the connecting public road

Development Control Plan

Port Stephens Council

5

## B5

**Development controls****Flood compatible design**

- B5.3<sup>4</sup> Development for a building (and/or an associated driveway or access) must be of a **flood compatible design** and construction and shall meet the relevant requirements in the *Construction of Buildings in Flood Hazard Areas* (Australian Building Codes Board). Council may also require **structural certification** for development proposed on land which becomes a floodway in the **PMF**.

**Development controls****Fencing**

- B5.4<sup>5</sup> Fencing on **flood prone land** should be stable in events up to the current day **1% AEP flood event** and not obstruct the flow of floodwater.

**Electrical features**

- B5.5<sup>6</sup> All incoming main power service equipment, including all metering equipment, and all electrical fixtures, such as power points, light fittings, switches, heating, ventilation and other service facilities must be located above the **FPL**, or where possible above the **PMF**.
- Where the above cannot be achieved, the following features shall be used:
- Electrical cabling is not to be installed within walls, or chased into walls; and
  - Any circuit containing switches, power points or any other electrical fitting that are located below the **FPL**, shall connect to the power supply through an individual Residual Current Device (**RCD**), located in the meter box.

**Potentially hazardous and/or polluting material**

- B5.6<sup>7</sup> The storage of hazardous or potentially hazardous materials, potentially polluting material or material that could be washed from site and cause harm downstream must be stored above the **FPL** with appropriate bunding.
- B5.7<sup>8</sup> Items that may wash away during flood events (e.g. rainwater tanks, hot water tanks, gas cylinders, shipping containers) must be elevated above the **1% AEP flood event** level in the year 2100 (without **freeboard**) or anchored to resist buoyancy and impact forces.

**B5.B Development on all flood prone land other than minimal risk flood prone land****Objectives**

In addition to the objectives listed in B5.A, the following objectives apply to development on all **flood prone land** other than **minimal risk flood prone land**:

- To ensure that appropriate controls are applied to development on land where more than a minimal risk is present.

**Development controls****Flood impact and risk assessment**

- B5.8<sup>9</sup> A **flood impact and risk assessment** is required for:
- Any **fill** on land identified as **floodway**.

## B5

## Development controls

- Any **fill** located in a **flood storage area**, unless:
  - The net volume of **fill** does not exceed the lesser of 20% or 2000m<sup>3</sup> of the **flood volume** of the lot in the **1% AEP flood event** in the year 2100 (this includes consideration of previous **fill** volumes); and
  - It is demonstrated that the **fill** does not adversely affect local drainage patterns of all events up to the **1% AEP flood event** in the year 2100.
  - Note: Fill in **flood storage areas** greater than the abovementioned volume can be offset by **flood storage**. Offsetting can be achieved through consolidation of lots and/or assigning an 'easement to flood land' on the compensatory lot/s. Compensatory lots must be located within the zone of influence of the proposed **fill** (as demonstrated by the **flood impact and risk assessment**) or adjacent to the proposed **fill** and be of the same hazard category of the subject site.
- Any **fill** for the purposes of a **livestock flood refuge mound**, unless the **livestock flood refuge mound** is located in an identified **flood fringe area**:
  - The volume/size and location of the **livestock flood refuge mound** meets the criteria in Figure BK; and
  - The size of the mound must have regard to the agricultural capacity of the land. The design and size of the mound shall be determined by reference to the *NSW Department of Primary Industries –Agriculture. 2009, 'Primefacts: Livestock flood refuge mounds'*; and
- Where the proposed development could change flood behaviour, affect existing flood risk, or expose people to flood risks that require management or;
- If Council determines a **flood impact and risk assessment** is necessary for any other reason.

Figure BK: Livestock flood refuge mound

Size of mound	Distance from nearest property
20m x 20m (at current day 1% AEP flood level and 0.5m below the current day 1% AEP flood level)	> 180m
20m x 20m (1.0m below the current day 1% AEP flood level)	> 40m
20m x 20m (1.5m below the current day 1% AEP flood level)	> 25m
40m x 40m (at current day 1% AEP flood level, 0.5m below the current day 1% AEP flood level and 1.0m below the current day 1% AEP flood level)	> 830m
40m x 40m (1.5m below current day 1% AEP flood level)	> 170m

Note: Interpolation between the values listed above should be based on the length of the mound perpendicular to the direction of flow, followed by the depth below the current day **1% AEP flood event** level.

## Development controls

## Ongoing flood adaptation

- B5.9  
10 For residential accommodation, subdivision, commercial premises, industrial premises, garages, open car parking spaces and carports, a reduced **planning horizon** of 50 years from the date of determination will be accepted where the design facilitates ongoing flood adaptation (ie the future raising of the building).

## B5

## Development controls

Minor alterations and additions to existing residential accommodation

- B5.10-11** Where proposed alterations and additions to existing **residential accommodation** is less than 40% of the **gross floor area** of the existing **residential accommodation**, and does not involve a net increase in the number of bedrooms, Council will consider a **FFL** lower than the **flood planning level (FPL)**, but not lower than the existing floor level. Any additional flood risk must include mitigation measures to reduce the overall flood risk of the development.

Driveways and access

- B5.11-12** Access from the building envelope **development** to the public road is to have a minimum **finished access level** of:

- The **flood immunity** of the connecting public road; or
- The current day **1% AEP flood event** level for the site.

- B5.12-13** Earthworks for driveways and access must satisfy the objectives of B3.C of the **DCP** and **LEP**.

Note: Impacts on local drainage and localised flooding should be considered and addressed. Driveways should be designed and constructed in accordance with Councils standard design drawings.

Subdivision

- B5.13-14** Subdivision that creates the ability to erect additional dwellings is to indicate building envelopes above the **FPL** and comply with the requirements of B5.11-12, B5.12-13 and B5.14-15 of this Part.

Emergency onsite flood refuge

- B5.14-15** If ~~evacuation egress from residential accommodation, a commercial premises, an industrial premises, fill or development vulnerable to emergency response and critical infrastructure to flood free areas cannot be achieved via a route that is flood free in the current day 1% AEP flood event or is a low hazard flood area~~, an onsite **flood refuge** must be provided meeting the following criteria ~~the development to the public road does not satisfy B5.12, a flood refuge may be accepted as an alternative in the following circumstances:~~

- Is located above the **PMF** level;
- **Flood modelling is provided to demonstrate the refuge will be isolated for a period of no more than 6 hours in a range of events, including flash flooding, and up to the 1% AEP flood event in the year 2100;**
- **The development is not located in, or surrounded by, a floodway**
- Is intrinsically accessible to all people on the site, plainly evident and self-directing;
- Is accessible in sufficient time for all occupants with fail safe access and no reliance on elevators;
- ~~Has unobstructed external access for emergency boats during flooding;~~
- Caters for the number of persons that could reasonably be expected on-site at any one time (approx. 2m<sup>2</sup> per person);
- Provides adequate shelter from the storm and has natural lighting and ventilation; and
- Contains sufficient clean water, **food**, a first aid kit, portable radio with spare batteries and a torch with spare batteries.

Note: If a **flood refuge** is required **proposed**, the DA must be accompanied by **structural certification for all floods up to the PMF flood event**.

B5	
Development controls	
Development on land identified as <b>overland flow path</b>	
B5.15 16	<p>A <b>site based overland flow report</b> must be submitted for development located within a designated <b>overland flow path</b>. The purpose of this report is to demonstrate that the development:</p> <ul style="list-style-type: none"><li>• Will not result in material increase in flood level or flood hazard upstream, downstream or surrounding properties; and</li><li>• Will provide acceptable management of flood risk with appropriate development levels to ensure the safety of people.</li></ul>

B5.C Development on land identified as floodway

Objectives

In addition to the objectives listed in B5.A and B5.B, the following objectives apply to development onland defined as **floodway**:

- To ensure development on land identified as **floodway** is restricted to low risk development.
- To ensure the capacity of the **floodway** to convey and contain floodwaters is not diminished.

Development controls	
Appropriate development	
B5.16 17	Development other than farm buildings and/or <b>fill</b> is not supported on land identified as either low hazard floodway or high hazard floodway.
Fencing	
B5.17 18	Fencing in a <b>floodway</b> should not include non-permeable materials or fencing types that could restrict or redirect flood waters.

~~B5.D Application of performance based solutions~~

~~Objectives~~

~~Performance based solutions that meet the objectives listed below apply to:~~

- ~~• Proposed development identified as suitable on flood prone land in Figure B1 that cannot meet the relevant development controls in this Part; or~~
- ~~• Proposed development that is identified as possibly suitable on flood prone land in Figure B1, subject to performance based solutions.~~

## B5

**Performance-based solutions**

## Risk to life

- B5.18 The proposed land use is consistent with Figure B1, which shows suitable land uses by flood hazard category (as identified on a **flood certificate**) and the proposed development incorporates adequate measures to manage risk to human life from flooding, including:-
- Evacuation access from an area affected by flooding to an **area free of risk from flooding**, taking into account any potential access restrictions;
  - Warning times and procedures to make people aware of the need to evacuate;
  - Consideration of the current and potential future occupants; and
  - Consistency with the most recent Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

## Risk to property

- B5.19 The proposed development will not increase the potential individual or cumulative flood impacts on other development or properties that are likely to occur in the same **floodplain**. In determining any potential increase in flood impacts, Council will consider:
- Future (in the year 2100) flood levels and/or velocities including, but not limited to the **5% AEP flood event**, **1% AEP flood event** and **probable maximum flood (PMF)** events;
  - Loss of **flood storage** in the immediate **floodplain**; and
  - Consistency with the most recent, Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

## Flood hazard compatibility

- B5.20 The proposed development must be compatible with the flood hazard category of the land (as identified on a **flood certificate**) or include mitigation measures or offsets to reduce the **flood risk**. In determining compatibility, Council will consider:
- Whether there is other land on the site with lower flood risks where the development could be located;
  - Depth of flood inundation on the site and the adjacent land;
  - Flow velocity on the site as well as upstream and downstream from the site;
  - Suitability of design so that the development does not become isolated by high hazard floodwaters; and
  - Consistency with the most recent, Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.



## E1

## E1 Glossary

**flood impact and risk assessment** is a comprehensive technical investigation of flood behaviour that defines the variation over time of flood levels, extent and velocity for flood events of various severities up to and including the **PMF** event. It covers the entire floodplain catchment, with particular emphasis on the area under consideration. The flood impact and risk assessment will:

- i. Be certified by a chartered Professional Engineer who is recognised under the Engineers Australia's National Engineering Register (**NER**), who has experience in hydraulics and floodplain management;
- ii. Be a comprehensive document that includes numerical flood modelling of the proposed development area;
- iii. Ensure that the extent of the study adequately assesses all flooding characteristics and impacts of the development in the area;
- iv. Be consistent with any existing **flood impact and risk assessment** or floodplain risk management plan undertaken for Council for the subject site. Where there is deviation from the Council adopted studies, the flood study must detail and justify the deviations;
- v. Be consistent with the **NSW Floodplain Development Manual 2005 Flood Risk Management Manual** and the current version of Australian Rainfall and Runoff and determine the existing flooding characteristics and assess the impacts of the proposal, including assessment of design flood events including 10% **AEP**, 5% **AEP**, 1% **AEP** and **PMF** for existing conditions, 2050 and 2100; and
- vi. Assess cumulative flood storage impacts, flood levels, velocity (including direction), hazard and hydraulic categories.

**Floodplain Risk Management Policy** refers to Council's adopted policy outlining the management of risk associated with flooding on lands across the Local Government Area in accordance with State Government's Flood-Prone Land Policy and **NSW Floodplain Development Manual 2005**.

**Floodplain Risk Management Study** is a study of the risks across the floodplain and evaluates management options for both existing and proposed development. A floodplain risk management study needs to be developed in accordance with the principles and guidelines contained in the **NSW Floodplain Management Manual Flood Risk Management Manual**.

**habitable room** as defined by the **NSW Floodplain Development Manual 2005** and the current Building Code of Australia means a room used for normal domestic activities, and -

- a. includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room, home theatre and sunroom; but
- b. excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.

**Note:** the **NSW Floodplain Development Manual 2005** provides the following definition for industrial and commercial situations: an area used for offices or to store valuable possessions susceptible to flood damages in the event of a flood.

## E1

**NSW Floodplain Development Manual 2005** Flood Risk Management Manual refers to the State Government manual relating to the development of flood liable land for the purposes of section 733 of the *Local Government Act 1993*

**sensitive and hazardous development** includes the following land uses -

- a. boarding houses;
- b. caravan parks;
- c. correctional centres;
- d. early education and care facilities;
- e. eco-tourist facilities;
- f. educational establishments;
- g. emergency services facilities;
- h. group homes;
- i. hazardous industries;
- j. hazardous storage establishments;
- k. hospitals;
- l. hostels;
- m. information and education facilities;
- n. respite day care centres;
- o. seniors housing;
- p. sewerage systems;
- q. tourist and visitor accommodation; and
- r. water supply systems

## Explanation of Amendments

### Draft Amendments to Port Stephens Development Control Plan 2014 – Chapter B5 Flooding

#### NO. EXPLANATION OF AMENDMENTS

##### 1 Figure BF: Determine the assessment pathway

1. Amend the table to delete “The proposed development may be suitable if it includes acceptable performance based solutions to meet the objectives of the relevant development controls at B5.1 to B5.20”
2. Amend the table to delete “Development that cannot meet the development controls may also be suitable if it includes acceptable performance based solutions to meet the objectives of the relevant development controls at B5.18 to B5.20”

**Explanation:** Performance based solutions are no longer considered acceptable criteria to assess if the proposed development may be suitable.

##### 2 Determining development suitability

1. Delete “In some instances the risks of new development are substantially higher and the ability to develop the land is less certain. In these instances, an applicant may prepare performance based solutions to meet the objectives of the relevant development controls and demonstrate that the risks have been mitigated. If the solution cannot demonstrate acceptable mitigation of risk, the new development may be an unsuitable use of the land (Refer to Figure BI below).”
2. Add “In some instances the risks of new development are substantially higher and the land will be unsuitable for development. In these instances, the development will not be supported by Council.”

**Explanation:** Performance based solutions are being removed and this section is therefore no longer applicable.

##### 3 Figure BI: Suitable land uses by flood hazard category (as identified on a flood certificate)

1. Amend development item to delete “Development vulnerable to emergency response, and critical infrastructure”;

## ITEM 1 - ATTACHMENT 4 DCP CHAPTER B5 FLOODING - EXPLANATION OF AMENDMENTS.

- 
2. Replace with "Sensitive and hazardous development".

**Explanation:** Provides clarity over type of development.

3. Amend the table to remove "PB" (a performance based solution may be provided to demonstrate that the proposed land use is suitable); and
4. Replace "PB" with "U" (unsuitable land use on flood prone land).

**Explanation:** Performance based solutions may no longer be provided to demonstrate that the proposed land use is suitable. Based on the outcomes of the Land and Environment Court (LEC) decision (Ward v Port Stephens Council [2023] NSW LEC 1493), it was concluded that the existing performance based controls for dwellings proposed in floodways are too ambiguous, subjective and open to interpretation, and they have overall set an unacceptably low bar for approval.

---

#### 4 B5.A Development on all flood prone land

1. Amend objective:  
Delete "To recognise flood prone land as a valuable social, economic and environmental resource that should not be sterilised by inappropriate development"; and  
Replace with "To treat floodplains as an asset, specialising in uses that are productive and minimise risk to life during major weather events."

**Explanation:** To provide better clarity around floodplain importance.

2. Replace 'Floodplain Development Manual' with 'Flood Risk Management Manual'.

**Explanation:** The Flood Risk Management Manual is the current policy and manual for the management of flood liable land.

3. Add control B5.1  
"Development is in accordance with Figure BI.  
Note: Development deemed unsuitable in accordance with Figure BI is not supported."

**Explanation:** Development must be suitable with the categories in the table.

4. Renumber existing controls from B5.1 to B5.18 to allow for the new the new control described above.

**Explanation:** the numbering requires amending as a result of the new B5.1 control.

---

## ITEM 1 - ATTACHMENT 4 DCP CHAPTER B5 FLOODING - EXPLANATION OF AMENDMENTS.

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**5 Figure BJ: Finished floor level**

1. Amend Development type item to delete "Development vulnerable to emergency response, and critical infrastructure";
2. Replace with "Sensitive and hazardous development".

**Explanation:** Provides clarity over type of development.

3. Amend spelling.
  4. Update numbering of influenced controls.
- 

**6 Minor alterations and additions to existing residential accommodation**

1. Amend renumbered control B5.12 (currently B5.11).  
Replace "building envelope" with "development" to read "Access from the development to the public road is to have a minimum finished access level of..."

**Explanation:** Provide clarity to the finished access level requirements by referencing the development and not the building envelope.

---

**7 Emergency onsite flood refuge**

Amend control B5.15 (existing B5.14)

1. Delete "If evacuation egress from residential accommodation, a commercial premises, an industrial premises, fill or development vulnerable to emergency response and critical infrastructure to flood free areas cannot be achieved via a route that is flood free in the current day 1% AEP flood event or is a low hazard flood area, an onsite flood refuge must be provided meeting the following criteria:";
2. Replace with "If evacuation egress from the development to the public road does not satisfy B5.12, a flood refuge may be accepted as an alternative in the following circumstances:"

**Explanation:** Provides clarity for when a refuge may be an acceptable option based on the egress satisfying B5.12.

3. Add bullet point
-

## ITEM 1 - ATTACHMENT 4 DCP CHAPTER B5 FLOODING - EXPLANATION OF AMENDMENTS.

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“Flood modelling is provided to demonstrate the refuge will be isolated for a period of no more than 6 hours in a range of events up to the 1% AEP flood event in the year 2100”

**Explanation:** The 6-hour maximum timeframe for flood refuge isolation is proposed in the NSW Department of Planning and Environment draft Shelter-in-place Guideline.

4. Add bullet point  
“The development is not located in, or surrounded by, a floodway”

**Explanation:** Clarifies when a flood refuge may be acceptable as an option.

5. Add food to the list of essential items to be provided in a flood refuge.

**Explanation:** Updates the list of essential items needed on a flood refuge.

6. Amend Note to delete “required” and replace with “proposed” to read:  
“Note: If a flood refuge is proposed, the DA must be accompanied by structural certification for all floods up to the PMF flood event.”

**Explanation:** Specifies DA requirements if a flood refuge is proposed.

---

### B5.D Application of performance based solutions

8

1. Delete control, objectives and performance based solutions relating to risk of life, risk of property and flood hazard compatibility.

**Explanation:** Performance based solutions are no longer considered acceptable criteria to assess if the proposed development may be suitable.

---

## ITEM 1 - ATTACHMENT 4 DCP CHAPTER B5 FLOODING - EXPLANATION OF AMENDMENTS.

Draft Amendments to Port Stephens Development Control Plan  
2014 – Chapter E1 Glossary

## NO. EXPLANATION OF AMENDMENTS

## 1 Definition 'flood impact and risk assessment'

1. Amend wording in 'v' from 'NSW Floodplain Development Manual 2005' to 'Flood Risk Management Manual'.

**Explanation:** Update in accordance with current policies.

## 2 Definition 'Floodplain Risk Management Policy'

1. Delete the following wording from definition 'in accordance with State Government's Flood Prone Land Policy and NSW Floodplain Development Manual 2005'.

**Explanation:** Update in accordance with current policies.

## 3 Definition 'Floodplain Risk Management Study'

1. Delete the following wording from definition 'NSW Floodplain Development Manual 2005' and replace with 'Flood Risk Management Manual'.

**Explanation:** Update in accordance with current policies.

## 4 Definition 'habitable room'

1. Delete the following wording from definition 'NSW Floodplain Development Manual 2005'.

**Explanation:** Update in accordance with current policies.

## 5 Definition 'NSW Floodplain Development Manual 2005'

1. Delete the following wording from definition 'Floodplain Development Manual 2005' and replace with 'Flood Risk Management Manual'.

**Explanation:** Update in accordance with current policies.

## ITEM 1 - ATTACHMENT 4 DCP CHAPTER B5 FLOODING - EXPLANATION OF AMENDMENTS.

**6 Add definition 'sensitive and hazardous development'**

## 1. Add a new definition –

**sensitive and hazardous development** includes the following land uses –

- (a) boarding houses,
- (b) caravan parks,
- (c) correctional centres,
- (d) early education and care facilities,
- (e) eco-tourist facilities,
- (f) educational establishments,
- (g) emergency services facilities,
- (h) group homes,
- (i) hazardous industries,
- (j) hazardous storage establishments,
- (k) hospitals,
- (l) hostels,
- (m) information and education facilities,
- (n) respite day care centres,
- (o) seniors housing,
- (p) sewerage systems,
- (q) tourist and visitor accommodation,
- (r) water supply systems.

**Explanation:** new definition explains what land uses are considered sensitive and hazardous development in relation to flood controls.

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**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023****ITEM NO. 1****FILE NO: 23/266681  
EDRMS NO: PSC2023-04100****DRAFT AMENDMENT TO PORT STEPHENS DEVELOPMENT CONTROL PLAN  
2014 – CHAPTER B5 FLOODING**

REPORT OF:      BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION  
                         MANAGER  
DIRECTORATE:    COMMUNITY FUTURES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Places the draft Port Stephens Development Control Plan 2014 Chapter B5 Flooding (**ATTACHMENT 1**) as amended on public exhibition in the week commencing 15 January 2024 for a period of 28 days, if no submissions are received, adopt as recommended without a further report to council.
- 

**ORDINARY COUNCIL MEETING - 28 NOVEMBER 2023  
MOTION**

<b>276</b>	<b>Councillor Giacomo Arnott Councillor Jason Wells</b>  It was resolved that Council place the draft Port Stephens Development Control Plan 2014 Chapter B5 Flooding ( <b>ATTACHMENT 1</b> ) as amended on public exhibition by the end of November 2023, until 12 February 2024, with advertisement in the media of the public exhibition period to occur from 15 January 2024 and social media advertisement to occur throughout the whole period, with the Plan to return to Council following the exhibition period to consider adoption.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Peter Kafer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023****BACKGROUND**

The purpose of this report is to seek Council endorsement to place the draft amendments to the Port Stephens Development Control 2014 (DCP) Chapter B5 Flooding (**ATTACHMENT 1**) on public exhibition for a period of 28 days. The exhibition period will be delayed to account for the Christmas shutdown period.

The proposed changes to Chapter B5 Flooding are in response to the outcomes of the NSW Flood Inquiry and a recent Land and Environment Court (LEC) decision (Ward v Port Stephens Council [2023] NSW LEC 1493) (Ward vs PSC). The NSW Flood Inquiry recommends actions for Councils and the State Government to discourage certain development in high risk flood areas. The Ward vs PSC LEC decision overturned Council's refusal of a dwelling in a high hazard floodway and by virtue of the decision, identified a number of errors and inconsistencies in the drafting of Chapter B5 Flooding in the DCP.

Based on the outcomes of the Ward vs PSC LEC decision, it was concluded that the existing DCP performance based controls for dwellings proposed in floodways are too ambiguous, subjective, open to interpretation, and set an unacceptably low bar for approval.

This report recommends the DCP be amended to:

- Prohibit the approval of residential development in low and high hazard floodways
- Rectify drafting errors and inconsistencies in the DCP
- Make minor changes to the objectives of the chapter to align with the outcomes of the NSW Flood Inquiry
- Update definitions to reflect new terminology (**ATTACHMENT 2**).

The proposed change would bring the DCP in line with the approach taken in the DCPs of other local Councils, including Lake Macquarie City Council, Maitland City Council, Cessnock City Council and the City of Newcastle.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Program to develop and implement Council's key planning documents

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no significant financial or resource implications for Council as a consequence of the proposed recommendations.

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**Environmental Planning and Assessment Act 1979 (EP&A Act)

Division 3.6 of the EP&A Act relates to development control plans. Should Council resolve to proceed with the amendments, all necessary matters in preparing the plan will be carried out in accordance with the EP&A Act.

Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)

Division 2 of Part 2 of the EP&A Regulation specifies the requirements for public participation. The recommendation is in accordance with the provisions of the EP&A Regulation.

Port Stephens Development Control Plan 2014 (DCP)

This report recommends the exhibition of proposed amendments to DCP Chapter B5 Flooding to introduce objectives and development controls for future development to prohibit the approval of residential development in floodways.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council could be encouraging development that is inconsistent with the Flood Risk Management Manual and the limited legal indemnity relating to decisions made by Council in relation to	Low	Accept the recommendation.	Yes

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023**

flooding under Section 733 of the Local Government Act 1993 may not be available.			
There is a risk that approving development in floodways could present an unacceptable and unnecessary risk to life for the occupants.	Low	Accept the recommendation.	Yes
There is a risk that prohibiting the approval of residential development in floodways could give less discretion for rare instances where a dwelling may be suitable in a floodway, such as where a dwelling is proposed to be raised on a fill pad above the Probable Maximum Flood level and flood free evacuation is available.	Low	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed amendments to DCP Chapter B5 Flooding are considered to have positive social, environmental and economic implications by ensuring that new development does not present:

- new flood risk to communities, which if replicated could cause long-term unsustainable strain on emergency services personnel by increasing the number of dwellings in floodways that cannot be safely evacuated.
- landowners being subject to financial implications caused by unaffordable insurance premiums and are considered uninsurable.
- landowners being subject to financial implications of temporary accommodation when displaced, additional food costs preparing for isolation, and lost wages during isolation.
- landowners and or occupiers being subject to undue stress, including emotional stress, caused by evacuation warnings, actual evacuation attempts and when isolated by floodwaters.

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023****CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section to identify and consider any issues prior to exhibition.

Internal

Internal consultation has been undertaken with the Development Planning and Development Engineering Teams on the proposed objectives and development controls for flooding.

External

If supported, the proposed amendments to DCP Chapter B5 Flooding will be placed on public exhibition for a period of 28 days together with an Explanation of Amendments (**ATTACHMENT 3**).

The amendments will be made available on Council's website in accordance with the EP&A Regulation and the Port Stephens Community Participation Plan.

Submissions on the proposed draft amendments to the DCP will be invited during the public exhibition period and, if submissions are received, they will be considered in a future report back to Council including any recommended post-exhibition changes. A submission summary table will be included with the post-exhibition report to Council.

**OPTIONS**

- 1) Accept the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

**ATTACHMENTS**

- 1) Draft Port Stephens Development Control Plan 2014 Chapter B5 Flooding.
- 2) Glossary - Port Stephens Development Control Plan 2014 Chapter B5 Flooding.
- 3) Explanation of Amendments.

**COUNCILLORS' ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM NO. 2

FILE NO: 23/370245  
EDRMS NO: PSC2017-00180

**DRAFT INTEGRATED PLANNING AND REPORTING DOCUMENTS AND FEES AND CHARGES**

REPORT OF: ZOE PATTISON - DIRECTOR CORPORATE STRATEGY AND SUPPORT  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorses the draft Integrated Planning and Reporting documents, being the Delivery Program 2022 to 2026 incorporating the Operational Plan 2024 to 2025 (**ATTACHMENT 1**), Resourcing Strategy 2024 to 2034 incorporating the Workforce Management Strategy 2022 to 2026, Long Term Financial Plan 2024 to 2034 and Strategic Asset Management Plan 2024 to 2034 (**ATTACHMENT 2**) and the Fees and Charges 2024 to 2025 (**ATTACHMENT 3**).
- 2) Places the draft documents (**ATTACHMENTS 1 - 3**) on public exhibition for a period of 28 days, invites submissions and reports back to Council.

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**BACKGROUND**

The purpose of this report is to seek Council endorsement of the following draft Integrated Planning and Reporting (IP&R) documents:

- Delivery Program 2022 to 2026 incorporating the Operational Plan 2024 to 2025 (**ATTACHMENT 1**).
- Resourcing Strategy 2024 to 2034 incorporating the Workforce Management Strategy 2022 to 2026, Long Term Financial Plan 2024 to 2034 and Strategic Asset Management Plan 2024 to 2034 (**ATTACHMENT 2**).
- Fees and Charges 2024 to 2025 (**ATTACHMENT 3**).

In accordance with the Local Government Act and other applicable legislation, Council is required to:

- Review its 4 year Delivery Program each year when preparing the Operational Plan.
- Have its Operational Plan adopted before the beginning of each year and detail the activities to be engaged in by the council during the year as part of the Delivery Program covering that year.
- Prepare a Resourcing Strategy which includes the Long Term Financial Plan, Workforce Management Strategy and Strategic Asset Management Plan, for the provision of resources required to perform its functions.

## ORDINARY COUNCIL - 9 APRIL 2024

- Set its Fees and Charges prior to 1 July 2024, and make the rates prior to 1 August 2024.
- Publicly exhibit all of the IP&R documents and Fees and Charges for a period of at least 28 days, considering submissions prior to adoption of the final documents.
- This is the last year of the Delivery Program for this Council term. A complete review will be undertaken with the new elected Council.

This iteration of draft documents forms part of Council's normal annual review of its IP&R documents which includes the most up to date information and data.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Governance	Deliver the Integrated Planning and Excellence program.

### FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to undertake integrated planning and reporting activities in accordance with the Local Government Act, Local Government (General) Regulation 2021 (Local Government Regulation) and the NSW Government's Integrated Planning and Reporting Guidelines (IPR Guidelines) and Handbook (IPR Handbook) September 2021. Sections 403 to 406 and 608 to 610 of the Local Government Act outline the specific requirements for developing the IP&R documents and Fees and Charges.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council does not have the resources to meet its Delivery Program and annual Operational Plan.	Medium	Staff continue to realistically plan and investigate resourcing opportunities as outlined in the Delivery Program and Resourcing Strategy.	Yes
There is a risk that if the draft documents are not exhibited as required: <ul style="list-style-type: none"> <li>• The fees therein cannot be charged.</li> <li>• Funds cannot be expended; and</li> <li>• Plans will not be implemented prior to 1 July as legislatively required.</li> </ul>	Low	Public exhibition of draft documents during April and May 2024 to allow sufficient time for public submissions and Council consideration and adoption of the final documents prior to 30 June 2024.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Community Strategic Plan, Delivery Program and Operational Plan are founded on a quadruple bottom line basis of social, economic, environmental and governance factors through 4 interconnected focus areas: Our Community, Our Place, Our Environment and Our Council. The 4 focus areas provide a structure for planning in each of the documents, enabling Council to address key actions while aiming to holistically meet the community's vision of 'A great lifestyle in a treasured environment'.

## CONSULTATION

The draft documents have been developed in consultation with staff across Council.

The draft Delivery Program and Operational Plan, draft Resourcing Strategy and draft Fees and Charges will go on public exhibition for 28 days.

Community input will be considered at a Council meeting in June 2024 following the public exhibition process and prior to adoption of the documents. The documents will be available for download from Council's website, with hard copies available for viewing at Council's administration building and libraries.



## **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

## **ATTACHMENTS**

- 1) Delivery Program 2022 to 2026 incorporating the Operational Plan 2024 to 2025. (Provided under separate cover) [⇒](#)
- 2) Resourcing Strategy 2024 to 2034 incorporating the Workforce Management Strategy 2022 to 2026, Long Term Financial Plan 2024 to 2034 and Strategic Asset Management Plan 2024 to 2034. (Provided under separate cover) [⇒](#)
- 3) Fees and Charges 2024 to 2025. (Provided under separate cover) [⇒](#)

## **COUNCILLORS' ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ITEM NO. 3**

**FILE NO: 24/58185  
EDRMS NO: PSC2009-02488**

**POLICY REVIEW: CASH INVESTMENT POLICY**

REPORT OF: GLEN PETERKIN - FINANCIAL SERVICES SECTION MANAGER  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Cash Investment Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Cash Investment Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Cash Investment Policy dated 13 April 2021, Minute No. 077 should no submissions be received.

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**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Cash Investment Policy **(ATTACHMENT 1)**. The objective of the policy is to guide Council's cash investment process and specifically:

- To establish Council's investment philosophy.
- To establish investment risk management guidelines.
- To prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose.
- To identify the duties of those involved in the investment process.
- To prescribe internal control, investment monitoring and reporting procedures.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Financial Management	Manage implementation of the Long Term Financial Plan 2023 to 2033.

**FINANCIAL/RESOURCE IMPLICATIONS**

Adoption of the policy will be within existing budget allocations.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

Section 23A of the Local Government Act 1993 (NSW) requires Council to take guidelines issued by the Chief Executive of the Office of Local Government into consideration before exercising its functions.

The provisions of the revised policy is mandated by the Office of Local Government through section 625 of the Local Government Act 1993 (the Act) as amended. Specifically these provisions mandate that Councils can only invest in securities as defined by the Ministerial Investment Order as detailed in the revised policy **(ATTACHMENT 1)**.

The revised policy complies with the Investment Policy Guidelines.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that legislative provisions or guidelines are not followed which could cause financial and/or reputational damage.	Low	Adopt the recommendations.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Income from investments needs to be optimised to ensure Council can provide facilities and services to the community on a sustainable basis.

## CONSULTATION

Consultation with key stakeholders has been undertaken by the Financial Services Section.

### Internal

The Executive Team were consulted to seek management endorsement.

### External

In accordance with local government legislation, the revised Cash Investment Policy will go on public exhibition for 28 days.

### **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

### **ATTACHMENTS**

- 1) Revised Cash Investment Policy. [↓](#)

### **COUNCILLORS' ROOM/DASHBOARD**

Nil.

### **TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC2009-02488

**TITLE:** CASH INVESTMENT POLICY

**OWNER:** FINANCIAL SERVICES SECTION MANAGER

### 1. PURPOSE:

1.1 The purpose of this policy is to guide Council's cash investment process and specifically:

- a) Establish Council's investment philosophy.
- b) Establish investment risk management guidelines.
- c) Prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose.
- d) Identify the duties of those involved in the investment process.
- e) Prescribe internal control, investment monitoring and reporting procedures.

### 2. CONTEXT/BACKGROUND:

2.1 The policy has been subject to periodic review in accordance with Council policy.

### 3. SCOPE:

3.1 Council has an obligation under its charter as the custodian and trustee of public assets to effectively account for and manage the assets for which it is responsible.

3.2 All Council investments are to be made in accordance with the following process:

- a) Determine surplus funds for investment from daily cash flow analysis.
- b) Determine cash requirements and the required term of the investment.
- c) Seek quotations from financial institutions, having regard for:
  - i. Section 625 of the Local Government Act 1993 which details how Council's may invest.
  - ii. The Ministerial Order made under section 625(2) of the Local Government Act 1993.
  - iii. Section 14 of the Trustee Act which details the powers of investment to which a trustee is to have regard when exercising the power of investment.
  - iv. Clause 212 of the Local Government (General) Regulation 2005.

## Policy

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## Policy



- v. Investment Policy Guidelines - issued in 2010 by the then Chief Executive of the Department of Local Government (now Office of Local Government) under s23A Local Government Act 1993.
- vi. Local Government Code of Accounting Practice and Financial Reporting.

### 4. DEFINITIONS:

- 4.1 An outline of the key definitions of terms included in the policy.

Cash Investment	Money placed with an approved entity that provides a return in the form of interest payments.
Surplus Funds	Money remaining after foreseeable cash flows are calculated.
BBSW	Bank Bill Swap Rate.
ADI	Authorised Deposit-Taking Institutions (ADIs) are corporations that are authorised under the Banking Act 1959 (Commonwealth) to take deposits from customers.
Bloomberg AusBond Bank	This is the industry standard benchmark for short term, conservative cash and fixed income portfolios which allows benchmarking of performance.

### 5. STATEMENT:

- 5.1 Investment Philosophy and Objectives:
  - 5.1.1 Investments are to be allocated to ensure there is sufficient liquidity to meet reasonably anticipated cash flow requirements, as and when they fall due, without incurring the risk of significant costs due to the unanticipated sale of an investment.
  - 5.1.2 Preservation of capital and the real value of surplus funds is the principal objective of the investment portfolio.
  - 5.1.3 Investments are expected to achieve a market average rate of return consistent with Council's risk tolerance. One dollar invested today is expected to earn interest so that it will increase in value to more than one dollar in the future, 'the time value of money'.
- 5.2 Cash Flow:
  - 5.2.1 Council is to plan for future cash flow requirements in its long term financial plan and annual budget.

## Policy

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## Policy



- 5.2.2 Cash flow is to be monitored daily.
- 5.2.3 Council is to have an overdraft facility to be used to meet unforeseen commitments, with the aim of avoiding use of this facility as the interest rate is likely to exceed the interest rate Council receives on its investments.
- 5.2.4 When appropriate to do so, daily surplus funds are to be automatically swept into an interest bearing bank account to maximise interest earnings.
- 5.2.5 Surplus funds that are forecast not to be required for in excess of 30 days are to be identified and invested.
- 5.3 Risk Management Criteria:
  - 5.3.1 Placement and retention of investments are to be assessed according to the following criteria:
    - a) Preservation of capital - the requirement for preventing losses in Council's investment portfolio's total value (considering the time value of money).
    - b) Diversification - setting limits to the amounts invested with individual financial institutions or government authorities to reduce credit risk.
    - c) Credit risk - the risk that a financial institution or government authority fails to pay the interest or repay the principal invested.
    - d) Market risk - the risk that the fair value or future cash flows of an investment will fluctuate due to market prices.
    - e) Liquidity risk - the risk Council is unable to redeem the investment at a fair price within a timely period.
    - f) Maturity risk - the risk relating to the length of term to maturity. The larger the term the greater the length of exposure and risk of market volatility and interest rate changes.
    - g) Financial instruments detailing investments must clearly show they are held in Council's name.
- 5.4 Authorised Investments:
  - 5.4.1 All investments must be denominated in Australian Dollars (AUD). Authorised investments are limited to those forms included in the Ministerial Investment Order, presently:
    - a) Local, State or Commonwealth Government bonds, debentures or securities.
    - b) Interest bearing deposits, debentures or bonds issued by an authorised deposit taking institution (ADI) regulated by Australian Prudential Regulation Authority, (i.e. a bank, building society or credit union granted authority by APRA to carry on a banking business in Australia - a full list of ADIs is available on the APRA website [www.apra.gov.au](http://www.apra.gov.au)).
    - c) Investments with NSW Treasury Corporation or Hourglass Investment facility.

### Policy

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## Policy



### 5.5 Prohibited Investments:

5.5.1 This investment policy prohibits any investment carried out for speculative purposes including, but not limited to:

- a) Derivative based instruments.
- b) Principal only investments or securities that provide potentially nil or negative cash flow.
- c) Stand-alone securities issued that have underlying futures, options forward contracts or swaps of any kind.

5.5.2 This policy also prohibits the use of leveraging (borrowing to invest) of an instrument.

### 5.6 Quotations on Investments:

5.6.1 Not less than 3 quotations shall be obtained from authorised institutions whenever an investment is proposed. The best quote for the day shall be accepted after allowing for administrative costs and also allowing for the diversification limits of this policy.

### 5.7 Term to Maturity:

5.7.1 The term to maturity of any of Council's direct investments must not exceed 10 years.

5.7.2 When the term to maturity exceeds 1 year, Council must ensure that a secondary market exists for the investment to enable the disposal of the investment prior to maturity if necessary.

5.7.3 To control liquidity risk Council's investment portfolio should be limited to the following term to maturity thresholds:

Term	Minimum %	Maximum %
< 1 year	30	100
> 1 year	0	50
> 3 years	0	40
> 5 years	0	30

5.7.4 The maturity thresholds above are to be assessed at the time of making a new investment.

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## Policy



### 5.8 Diversification:

- 5.8.1 Council shall diversify its investments by referencing Standard and Poors long term ratings (or equivalent) and limiting investments with any single financial institution as follows:

S & P Long Term Rating	Portfolio Maximum %	Single Financial Institution Maximum %
AAA (+ or -)	100	30 40
AA (+ or -)	100	30 40
A (+ or -)	80	20
BBB (+ or -)	30	10
Unrated (not including TCorp IM Funds)	20	10
<b>Specific Ministerial Approved Forms of Investment</b>		
TCorpIM Cash Funds		30%
TCorpIM Short Term Income Fund		30%
TCorpIM Medium Term Income Fund		2 10%
TCorpIM Long Term Income Fund		10%

- 5.8.2 The diversification limit above shall be assessed at the time of making a new investment.

- 5.8.3 Any subsequent reduction in portfolio size shall be disregarded in relation to assessing diversification limits of existing investments where there is likely to be significant costs or losses for terminating or disposing of an investment.

### 5.9 Reporting:

- 5.9.1 A monthly report shall be provided to Council, detailing the investment portfolio including type of investment, individual amounts invested, financial institution name, maturity date and interest rate. The report is to include a certificate as to whether or not the investments have been made in accordance with the Act, regulations and Council's Investment Policy.
- 5.9.2 For audit purposes certificates must be obtained from banks and investment brokers confirming the amounts of investments held on Council's behalf as at 30 June each year.

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### 5.10 Performance Benchmarks:

- 5.10.1 Council seeks to gain a return on investment at least equal to the following measures:

Investment	Performance Benchmark
Cash	RBA Cash Rate
Term Deposits	Bloomberg AusBond Bank Bill index.
Enhanced Investments	Bloomberg AusBond Bank Bill index.

### 5.11 Duties and Responsibilities of Council Officers:

- 5.11.1 The General Manager is responsible for ensuring that Council's decisions with respect to this investment policy are implemented. The General Manager has delegations to staff in place to make investments in accordance with this policy.
- 5.11.2 CI 212 of the Local Government (General) Regulation 2005 requires the Responsible Accounting Officer to provide a monthly written report to Council on its investments. The Responsible Accounting Officer is responsible for keeping Council's accounting records, ensuring they are kept up to date and in an accessible form. The Financial Services Section Manager is the Responsible Accounting Officer in Port Stephens Council and delegations to staff are in place to keep accounting records and report as required.
- 5.11.3 Council officers involved in investing funds are required to have appropriate skills to undertake the investment function, have delegations in place and read and comply with this investment policy.
- 5.11.4 Council officers involved in investing funds should act with the duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds and have regard to the requirements under the Trustee Act 1925.
- 5.11.5 Council officers involved in investing funds must not engage in activities that would conflict with the proper implementation and management of Council's investments.
- 5.11.6 The **Treasury & Assets Accountant** Finance Officer – Organisational Support, or other delegated Council officer is required to:
- Monitor cash flow on a daily basis and estimate cash requirements.
  - Ensure proposed investment products comply with this investment policy.

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## Policy



- c) Recommend investment of funds in accordance with the requirements of this policy.
  - d) Reconcile principal invested on at least a monthly basis.
  - e) Estimate and account for receipt of all interest due on investments.
  - f) Ensure financial instruments, investment certificates and related documents are kept in safe custody.
  - g) Prepare a monthly report for Council to the satisfaction of the Responsible Accounting Officer.
  - h) Cause the investment register to be updated on Council's website monthly.
  - i) Store all relevant documents, interest advices, market valuations in EDRMS.
- 5.11.7 To ensure adequate internal controls and separation of duties 2 of the 43 following listed Officers - Finance Revenue Coordinator, Financial Reporting Coordinator, **Management Accountant or Financial Accountant** ~~Finance Officer – Accountant~~ - are to authorise investment transactions. If the Finance Revenue Coordinator, Financial Reporting Coordinator, **Management Accountant** and/or **Financial Accountant** ~~Finance Officer – Accountant~~ are absent, investment transactions are to be authorised by either the **Financial Services Section Manager**, ~~Group Manager Corporate Services~~ or General Manager.
- 5.12 Investment Advisor:
- 5.12.1 When ensuring a proposed investment product complies with this investment policy it may be necessary to obtain independent financial advice. Before considering independent financial advice Council must ensure the financial advisor is licensed by the Australian Securities and Investment Commission. The advisor must confirm that they do not have any conflicts of interest in relation to the investment products being considered. When recommending or reviewing investments any independent financial advisor must provide written confirmation that they are not receiving any commissions or other benefits in relation to the investments being recommended or reviewed. Council is to undertake separate reference checks before relying on information provided by an advisor.
- 5.13 **Safe Custody Arrangements:**
- 5.13.1 Where necessary, investments may be held in safe custody on Council's behalf, providing the following criteria are met:
- a) Council must retain beneficial ownership of all investments.
  - b) Adequate documentation is provided, verifying the existence of the investments.
  - c) The custodian conducts regular reconciliation of records with relevant registries and/or clearing systems.

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## Policy



- d) The institution or custodian recording and holding the assets will be:
  - i. Austraclear.
  - ii. The custodian nominated by TCorpIM Funds.
  - iii. An institution with an investment grade Standard and Poor's, Moody's or Fitch rating.
- e) Council's assets must be entirely separate, and not be mingled with the assets of the advisor or any other counterparty in a sub-account.
- f) Council will have regard to costs and other consequences of any arrangements.

### 6. RESPONSIBILITIES:

- 6.1 Treasury & Assets Accountant, Financial Reporting Coordinator, Finance Revenue Coordinator, Management Accountant, Financial Accountant are responsible for complying with, monitoring, evaluating, reviewing and providing advice on this policy.
- 6.2 Financial Services Section Manager is responsible for implementing and complying with this policy.

### 7. RELATED DOCUMENTS:

- 7.1 Local Government Act 1993.
- 7.2 Local Government Act 1993 - s625 Investment Order (of the Minister) as made from time to time.
- 7.3 Local Government Act 1993 s23A Investment Policy Guidelines issued in 2010 by the then Chief Executive of the Department of Local Government (now Office of Local Government).
- 7.4 Local Government (General) Regulation 2005.
- 7.5 The Trustee Act 1925 - s14 - Powers of Investment.
- 7.6 Banking Act 1959 - Division 2AA Financial Claims Scheme.

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<b>RM8 container No</b>	PSC2009-02488	<b>EDRMS record No</b>	TBA
<b>Audience</b>	Council staff and community		
<b>Process owner</b>	Financial Services Section Manager		
<b>Author</b>	Financial Services Section Manager		
<b>Review timeframe</b>	3 years	<b>Next review date</b>	TBA
<b>Adoption date</b>	20 December 2005		

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	20/12/05	Financial Services Section Manager	Provide brief detail of changes to document.	
2.0	27/03/12	Financial Services Section Manager	Policy adopted.	382
3.0	24/06/14	Financial Services Section Manager	Amended policy adopted.	048
4.0	12/04/16	Financial Services Section Manager	Amended policy adopted.	156
			<p>This policy has been reviewed and formatted into the new template.</p> <p>Removed all references to Grandfathered Investments as Council no longer holds any investments that do not comply with the most recent Ministerial Investment Order.</p>	084

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			<p>Removed all references to CDO's as Council no longer holds any of these.</p> <p>Updated the Responsible Accounting Officer from the General Manager to the Financial Services Section Manager.</p> <p>Updated position titles to reflect current organisational chart.</p> <p>Updated the 'related documents' section to reflect current policies and legislation adopted by Council.</p>	
5.0	09/08/17	Financial Services Section Manager	<p>Added Financial Reporting Coordinator to authorise investment transactions in 11g.</p> <p>Updated position titles to reflect change in duties.</p> <p>RM8 record number updated from 16/316014 to 17/156898.</p> <p>Updated policy responsibilities to include the responsibilities of each position.</p> <p>Updated percentages in table 8a.</p>	
6.0	24/10/17	Financial Services Section Manager	Adopted by Council.	256
7.0	12/12/18	Financial Services Section Manager	Updated policy to be in new format.	180

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			<p>4.1 - Removed 'management directive' and replaced with 'policy'.</p> <p>5.8.1 - Separated BBB portfolio parameters from unrated ADI's and inserted BBB Portfolio max % to 30% and unrated at 20%. This is due to recent institutional market changes.</p> <p>Added Specific Ministerial Approved Forms of Investments.</p>	
8.0	13/4/21	Financial Services Section Manager	<p>Updated policy into new format.</p> <p>5.7.3 – Updated maximum from 70% to 50%.</p> <p>5.8.1 – Added '(not including TCorp IM Funds)'.</p> <p>5.8.1 – Removed 'NSW Treasury Corp Deposits and TCorpIM Funds 100%', added new Specific Ministerial Approved Forms of Investment.</p> <p>5.11.7 – Added additional authorising officer Finance Officer – Accountant.</p> <p>6.1 – Added additional authorising officer Finance Officer – Accountant.</p>	077
9.0	TBA	Financial Services Section Manager	<p>Updated policy to new format.</p> <p>4.1 - Additional definitions added for ADI and Bloomberg AusBond Bank.</p>	TBA

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## Policy



			<p>5.8.1 Adjusted investment diversification percentages for:</p> <ul style="list-style-type: none"> <li>• Single Financial Institution Maximum AAA from 30 to 40%,</li> <li>• Single Financial Institution Maximum AA from 30 to 40%,</li> </ul> <p>5.8.1 Adjusted Specific Ministerial Approved Forms of Investment:</p> <ul style="list-style-type: none"> <li>• TCorp IM Medium Term Income Fund from 20 to 10%.</li> </ul> <p>5.11.6 - Position title updates replacing "Finance Officer – Organisational Support" with "Treasury &amp; Assets Accountant".</p> <p>5.11.7 - Addition of listed officer from 3 to 4 and replaced "Finance Officer – Accountant" with "Management Accountant" and "Financial Accountant".</p> <p>Replaced requirement for investment transaction authorisation by "Group Manager Corporate Services" with "Financial Services Section Manager".</p> <p>5.13 New clause added - Safe Custody Arrangements.</p>	
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ITEM NO. 4

FILE NO: 24/63515  
EDRMS NO: PSC2010-00008

## POLICY REVIEW: COMPLAINT HANDLING

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Complaint Handling Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Complaint Handling Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Complaint Handling Policy dated 27 April 2021, Minute No. 100 should no submissions be received.

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## BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised Complaint Handling Policy (Policy) shown at **(ATTACHMENT 1)**.

The Policy is based on the model complaint handling policy developed by the NSW Ombudsman. It provides a framework for complaint management across Council and introduces an opportunity for continuous improvement with Council's service delivery to the community.

The Policy details roles and responsibilities of all parties to a complaint and the expected behaviours.

The Policy has been reviewed as part of Council's ongoing policy review program.

The Policy is presented for Council's consideration.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

## COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Governance	Deliver governance services and internal audit program

**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that without the appropriate complaints management framework in place, Council would not be compliant.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Through openness, transparency and accountability, Council will be able to reduce the impact of complaints on Council resources and focus on provision of Council services.

Management of complaints can require a high level of Council resources. By reducing the number of complaints and by following the structured complaints system, Council will be able to focus resources into delivery of Council services.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

Internal

The Executive Team has been consulted to seek management endorsement.

External

In accordance with local government legislation, the revised Complaint Handling Policy policy will go on public exhibition for 28 days.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Complaint Handling Policy. [↓](#)

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC2010-00008

**TITLE:** COMPLAINT HANDLING POLICY

**POLICY OWNER:** GOVERNANCE SECTION MANAGER

### 1. PURPOSE:

- 1.1 The Complaint Handling Policy (the **Ppolicy**) is intended to ensure that we handle complaints fairly, efficiently and effectively. Port Stephens Council's complaint management system is intended to:
  - a) enable us to respond to issues raised by people making complaints in a timely and cost-effective way.
  - b) boost public confidence in our administrative process.
  - c) provide information that can be used by us to deliver quality improvements in our services, staff and complaint handling.
- 1.2 The **Ppolicy** provides guidance to our staff and people who wish to make a complaint about Council's performance or operations.

### 2. CONTEXT/BACKGROUND:

- 2.1 Council has had a Complaint Handling Policy for many years which has been in alignment with the NSW Ombudsman's model Complaint Handling Policy.
- 2.2 The model policy has been updated following a review of the Australia/New Zealand Standard: Guidelines for complaint management in organisations (AS/NZ 10002:2014).
- 2.3 The **Ppolicy** provides an open and transparent process for the management of complaints at Council.
- 2.4 Council views a complaint as an opportunity to improve on service delivery when all circumstances have been considered.

### 3. SCOPE:

- 3.1 Port Stephens Council expects staff at all levels to be committed to fair, effective and efficient complaint handling. The following table outlines the nature of the commitment expected from staff and the way that commitment should be implemented.

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## Policy



Who	Commitment	How
General Manager	Promote a culture that values complaints and their effective resolution.	<ul style="list-style-type: none"> <li>• Report publicly on Port Stephens Council's complaint handling.</li> <li>• Provide adequate support and direction to key staff responsible for handling complaints.</li> <li>• Regularly review reports about complaint trends and issues arising from complaints.</li> <li>• Encourage all staff to be alert to complaints and assist those responsible for handling complaints to resolve them promptly.</li> <li>• Encourage staff to make recommendations for system improvements.</li> <li>• Recognise and reward good complaint handling by staff.</li> <li>• Support recommendations for service, staff and complaint handling improvements arising from the analysis of complaint data.</li> <li>• Views a complaint as an opportunity for improved service delivery.</li> </ul>
Manager responsible for complaint handling	Establish and manage our complaint management system.	<ul style="list-style-type: none"> <li>• Provide regular reports to the General Manager on issues arising from complaint handling work.</li> <li>• Ensure recommendations arising out of complaint data analysis are canvassed with the General Manager and implemented where appropriate.</li> <li>• Recruit, train and empower staff to resolve complaints promptly and in accordance with Port Stephens Council's policies and procedures.</li> <li>• Encourage staff managing complaints to provide suggestions on ways to improve the organisation's complaint management system.</li> <li>• Encourage all staff to be alert to complaints and assist those responsible for handling complaints resolve them promptly.</li> <li>• Recognise and reward good complaint handling by staff.</li> </ul>

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## Policy



Who	Commitment	How
Staff whose duties include complaint handling	Demonstrate exemplary complaint handling practices	<ul style="list-style-type: none"> <li>• Treat all people with respect, including people who make complaints.</li> <li>• Assist people make a complaint, if needed.</li> <li>• Comply with this policy and its associated procedures.</li> <li>• Keep informed about best practice in complaint handling.</li> <li>• Provide feedback to management on issues arising from complaints.</li> <li>• Provide suggestions to management on ways to improve the organisation's complaints management system.</li> <li>• Implement changes arising from individual complaints and from the analysis of complaint data as directed by management.</li> </ul>
All staff	Understand and comply with Port Stephens Council's complaint handling practices.	<ul style="list-style-type: none"> <li>• Treat all people with respect, including people who make complaints.</li> <li>• Be aware of Port Stephens Council's complaint handling policies and procedures.</li> <li>• Assist people who wish to make complaints access the Port Stephens Council's complaints process.</li> <li>• Be alert to complaints and assist staff handling complaints to resolve matters promptly.</li> <li>• Provide feedback to management on issues arising from complaints.</li> <li>• Implement changes arising from individual complaints and from the analysis and evaluation of complaint data as directed by management.</li> </ul>

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## Policy



### 3.2 Guiding principles.



### 3.3 Facilitate complaints

#### People focus

- 3.3.1. Port Stephens Council is committed to seeking and receiving feedback and complaints about our services, systems, practices, procedures, products and complaint handling. Such complaints provide Council with an opportunity for improved service delivery.
- 3.3.2. Any concerns raised in feedback or complaints will be dealt with within a reasonable time frame, in accordance with Council's Customer Service Framework.
- 3.3.3 People making complaints will be:
- provided with information about our complaint handling process.
  - provided with multiple and accessible ways to make complaints; such as in person, by letter, email or through assistance by other parties including staff.
  - listened to, treated with respect by staff and actively involved in the complaint process where possible and appropriate.
  - provided with reasons for our decision/s and any options for redress or review.

#### No detriment to people making complaints

- 3.3.4 Port Stephens Council will take all reasonable steps to ensure that people making complaints are not adversely affected because a complaint has been made by them or on their behalf.

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## Policy



### Anonymous complaints

- 3.3.5 Port Stephens Council accepts anonymous complaints and will carry out an investigation of the issues raised where there is enough information provided. It should be acknowledged that by making an anonymous complaint it may not be obvious **to you** what action Council has taken.

### Accessibility

- 3.3.6 Port Stephens Council will ensure that information about how and where complaints may be made to or about us is well publicised. Council will ensure that our systems to **make and** manage complaints are easily understood and accessible to everyone, particularly people who may require assistance.
- 3.3.7 If a person prefers or needs another person or organisation to assist or represent them in the making and/or resolution of their complaint, we will communicate with them through their representative if this is their wish. Anyone **may is able to** represent a person wishing to make a complaint with their consent (eg advocate, family member, legal or community representative, member of Parliament, another organisation).

### No charge

- 3.3.8 Complaining to Port Stephens Council is free.

## **3.4 Respond to complaints**

### Early resolution

- 3.4.1 Where possible, complaints will be resolved at first contact with Port Stephens Council.

### Responsiveness

- 3.4.2 Council will promptly acknowledge receipt of complaints.
- 3.4.3 Council will assess and prioritise complaints in accordance with the urgency and/or seriousness of the issues raised. If a matter concerns an immediate risk to safety or security the response will be immediate and will be escalated appropriately.
- 3.4.4 Port Stephens Council is committed to managing people's expectations, and will inform them as soon as possible of the following:

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## Policy



- a) The complaints process.
- b) The expected time frames for our actions.
- c) The progress of the complaint and reasons for any delay.
- d) Their likely involvement in the process.
- e) The possible or likely outcome of their complaint.

3.4.5 Council will advise people as soon as possible when we are unable to deal with any part of their complaint and provide advice about where such issues and/or complaints may be directed (if known and appropriate).

3.4.6 Council will also advise people as soon as possible when we are unable to meet our time frames for responding to their complaint and the reason for our delay.

### Objectivity and fairness

3.4.7 Council will address each complaint with integrity and in an equitable, objective and unbiased manner.

3.4.8 Council will ensure that the person handling a complaint is different from any staff member whose conduct or service is being complained about.

3.4.9 Conflicts of interests, whether actual or perceived, will be managed responsibly. In particular, internal reviews of how a complaint was managed will be conducted by a person other than the original decision maker.

### Responding flexibly

3.4.10 Council staff are empowered to resolve complaints promptly and with as little formality as possible, where appropriate. Council will adopt flexible approaches to service delivery and problem solving to enhance accessibility for people making complaints and/or their representatives.

3.4.11 Council will assess each complaint on its merits and involve people making complaints and/or their representative in the process as far as possible.

### Confidentiality

3.4.12 Council will protect the identity of people making complaints where this is practical and appropriate.

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## Policy



3.4.13 Personal information that identifies individuals will only be disclosed or used by the Council as permitted under the relevant privacy laws, secrecy provisions and any relevant confidentiality obligations.

### 3.5 Manage the parties to a complaint

#### Complaints involving multiple agencies

3.5.1 Where a complaint involves multiple organisations, we will work with the other organisation/s where possible; to ensure that communication with the person making a complaint and/or their representative is clear and coordinated.

3.5.2 Subject to privacy and confidentiality considerations, communication and information sharing between the parties will also be organised to facilitate a timely response to the complaint.

3.5.3 Where a complaint involves multiple areas within our organisation, responsibility for communicating with the person making the complaint and/or their representative will also be coordinated.

3.5.4 Where our services are contracted out, Council expect contracted service providers to have an accessible and comprehensive complaint management system. Council take complaints not only about the actions of Council staff but also the actions of service providers.

#### Complaints involving multiple parties

3.5.5 When similar complaints are made by related parties, ~~to we will try to arrange~~ it is Council's preference to communicate with a single representative of the group. Council will ensure it has the consent and agreement of the parties involved before doing so.

#### Empowerment of staff

3.5.6 All staff managing complaints are empowered to implement our complaint management system as relevant to their role and responsibilities.

3.5.7 Staff are encouraged to provide feedback on the effectiveness and efficiency of all aspects of our complaint management system.

#### Managing unreasonable conduct by people making complaints

3.5.8 Council is committed to being accessible and responsive to all people who approach us with feedback or complaints. At the same time our success depends on:

## Policy

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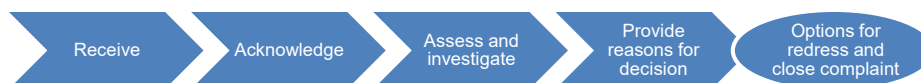


## Policy



- a) Council's ability to do our work and perform our functions in the most effective and efficient way possible the health, safety and security of our staff, and Council's ability to allocate our resources fairly across all the complaints we receive.
  - b) When people behave unreasonably in their dealings with Council, their conduct can significantly affect the progress and efficiency of Council work. As a result, we will take proactive and decisive action to manage any conduct that negatively and unreasonably affects Council and will support Council staff to do the same in accordance with this policy.
- 3.5.9 For further information on managing unreasonable conduct by people making complaints, please refer to Council's Managing Unreasonable Complainant Conduct Policy.

### 3.6 Complaint management system



#### Introduction

- 3.6.1 When responding to complaints, staff should act in accordance with our complaint handling procedures as well as any other internal documents providing guidance on the management of complaints.
- 3.6.2 Staff should also consider any relevant legislation and/or regulations when responding to complaints and feedback.
- 3.6.3 The five key stages in our complaint management system are set out below.

#### Receipt of complaints

- 3.6.4 Unless the complaint has been resolved at the outset, Council will record the complaint and its supporting information. Council will also assign a unique identifier to the complaint file, where appropriate.

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## Policy



3.6.5 The record of the complaint will document:

- a) the contact information of the person making a complaint;
- b) issues raised by the person making a complaint and the outcome/s they want;
- c) any other relevant information;
- d) any additional support the person making a complaint requires.

### Acknowledgement of complaints

3.6.6 Council will acknowledge receipt of each complaint promptly, and preferably within seven (7) working days.

3.6.7 Consideration will be given to the most appropriate medium (eg email, letter) for communicating with the person making a complaint.

## **3.7 Initial assessment and addressing of complaints**

### Initial assessment

3.7.1 After acknowledging receipt of the complaint, Council will confirm whether the issue/s raised in the complaint is/are within Council's control. Council will also consider the outcome/s sought by the person making a complaint and, where there is more than one issue raised, determine whether each issue needs to be separately addressed.

3.7.2 When determining how a complaint will be managed, Council will consider:

- a) how serious, complicated or urgent the complaint is.
- b) whether the complaint raises concerns about people's health and safety.
- c) how the person making the complaint is being affected.
- d) the risks involved if resolution of the complaint is delayed.
- e) whether a resolution requires the involvement of other organisations.

### Addressing complaints

3.7.3 After assessing the complaint, we will consider how to manage it. To manage a complaint we may:

- a) Give the person making a complaint information or an explanation.
- b) Gather information from the product, person or area that the complaint is about, or investigate the claims made in the complaint.

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## Policy



- 3.7.4 Council will keep the person making the complaint up to date on our progress, particularly if there are any delays. We will also communicate the outcome of the complaint using the most appropriate medium. Which actions we decide to take will be tailored to each case and take into account any statutory requirements.

### Providing reasons for decisions

- 3.7.5 Following consideration of the complaint and any investigation into the issues raised, Council will contact the person making the complaint and advise them:

- a) the outcome of the complaint and any action we took.
- b) the reason/s for our decision.
- c) the remedy or resolution/s that we have proposed or put in place.
- d) any options for review that may be available to the complainant, such as an internal review, external review or appeal.

- 3.7.6 If in the course of investigation, Council make any adverse findings about a particular individual, we will consider any applicable privacy obligations under the Privacy and Personal Information Protection Act 1998 and any applicable exemptions in or made pursuant to that Act, before sharing our findings with the person making the complaint.

### Closing the complaint, record keeping, redress and review

- 3.7.7 Council will keep comprehensive records about:

- a) how we managed the complaint.
- b) the outcome/s of the complaint (including whether it or any aspect of it was substantiated, any recommendations made to address problems identified and any decisions made on those recommendations.
- c) any outstanding actions that need to be followed up.

- 3.7.8 Council will ensure that outcomes are properly implemented, monitored and reported to the complaint handling manager and/or senior management.

### Alternative avenues for dealing with complaints

- 3.7.9 Council will inform people who make complaints to or about us about any internal or external review options available to them (including, but not limited, to the NSW Ombudsman and/or the NSW Office of Local Government).

## Policy

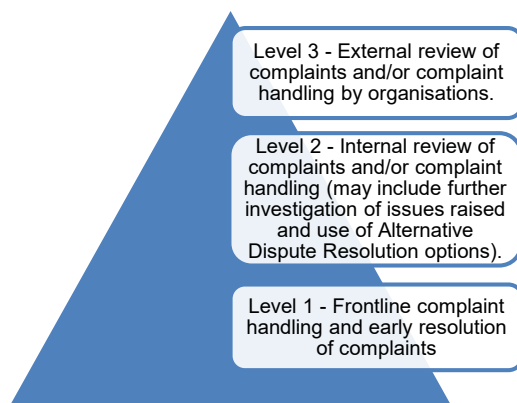
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## Policy



### 3.8 The three levels of complaint handling



- 3.8.1 Council aims to resolve complaints at the first level, the frontline. Wherever possible staff will be adequately equipped to respond to complaints, including being given appropriate authority, training and supervision.
- 3.8.2 Where this is not possible, Council may decide to escalate the complaint to a more senior officer within Council. This second level of complaint handling will provide for the following internal mechanisms:
- Assessment and possible investigation of the complaint and decision/s already made; and/or
  - facilitated resolution (where a person not connected with the complaint reviews the matter and attempts to find an outcome acceptable to the relevant parties).
- 3.8.3 Where a person making a complaint is dissatisfied with the outcome of Council's review of their complaint, they may seek an external review of our decision by the NSW Ombudsman.
- 3.8.4 All permanent residents who reside in a Port Stephens Beachside Holiday Park have the right to contact the Energy & Water Ombudsman NSW (EWON), including to lodge a complaint or for free independent information and advice. EWON is the government approved dispute resolution scheme for New South Wales energy customers. EWON receives, investigates and resolves customer complaints and disputes.

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## Policy



EWON's contact details are:

Energy & Water Ombudsman NSW  
Post Reply Paid 86550,  
Sydney South NSW 1234

Freecall 1800 246 545  
Online Complaint [www.ewon.com.au/complaints](http://www.ewon.com.au/complaints)  
Email [complaints@ewon.com.au](mailto:complaints@ewon.com.au)  
Website [www.ewon.com.au](http://www.ewon.com.au)

### 3.9 Accountability and learning

#### Analysis and evaluation of complaints

3.9.1 Council will ensure that complaints are recorded in a systematic way so that information can be easily retrieved for reporting and analysis. Council currently uses two system; Electronic Document Records Management System and the Customer Request Management system (CRM).

3.9.2 Regular reports will be run on:

- a) the number of complaints received.
- b) the outcome of complaints, including matters resolved at the frontline.
- c) issues arising from complaints.
- d) systemic issues identified.
- e) the number of requests we receive for internal and/or external review of our complaint handling.
- f) the time it took for the complaint be resolved.

3.9.3 Regular analysis of these reports will be undertaken to monitor trends, measure the quality of our customer service and make improvements.

3.9.4 Both reports and their analysis will be provided to the General Manager and senior management for review.

#### Monitoring of the complaint management system

3.9.5 Council will continually monitor our complaint management system to:

- a) ensure its effectiveness in responding to and resolving complaints.
- b) identify and correct deficiencies in the operation of the system.
- c) monitoring may include the use of audits, complaint satisfaction surveys and online listening tools and alerts.

## Policy

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## Policy



### Continuous improvement

3.9.6 Council is committed to improving the effectiveness and efficiency of our complaint management system. To this end, we will:

- a) support the making and appropriate resolution of complaints.
- b) implement best practices in complaint handling.
- c) recognise and reward exemplary complaint handling by staff.
- d) regularly review the complaints management system and complaint data.
- e) implement appropriate system changes arising out of our analysis of complaints data and continual monitoring of the system.

## 4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Complaint	<p>Expression of dissatisfaction made to or about us, our services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>A complaint covered by this Policy can be distinguished from:</p> <ul style="list-style-type: none"> <li>a) staff grievances [see our grievance procedure];</li> <li>b) public interest disclosures made by our staff [see our internal reporting policy];</li> <li>c) code of conduct complaints [see our code of conduct for definition, otherwise the complaint may be covered by this policy];</li> <li>d) responses to requests for feedback about the standard of our service provision [see the definition of 'feedback' below];</li> <li>e) reports of problems or wrongdoing merely intended to bring a problem to our notice with no expectation of a response [see definition of 'feedback'];</li> <li>f) service requests [see definition of 'service request' below];</li> <li>g) requests for information [see our access to information policy].</li> </ul>
Complaint management system	All policies, procedures, practices, staff, hardware and software used by Council the management of complaints.
Dispute	An unresolved complaint escalated either within or outside of our organisation.

### Policy

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## Policy

Feedback	Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly, to or about us, about our services or complaint handling where a response is not explicitly or implicitly expected or legally required.
Grievance	A clear, formal written statement by an individual staff member about another staff member or a work related problem.
Policy	A statement or instruction that sets out how we should fulfil our vision, mission and goals.
Procedure/process	A statement or instruction that sets out how our policies will be implemented and by whom.
Public interest disclosure	A report about wrong doing made by a public official in New South Wales that meets the requirements of the Public Interest Disclosures Act 1994.
Service request	Service request includes: <ul style="list-style-type: none"> <li>a) requests for approval.</li> <li>b) requests for action.</li> <li>c) routine inquiries about the organisation's business.</li> <li>d) requests for the provision of services and assistance.</li> <li>e) reports of failure to comply with laws regulated by the organisation.</li> <li>f) requests for explanation of policies, procedures and decisions.</li> </ul>

### 5. STATEMENT:

- 5.1 The Policy applies to all staff receiving or managing complaints from the public made to or about us, regarding our services, staff and complaint handling.
- 5.2 Staff grievances, code of conduct complaints and public interest disclosures are dealt with through separate mechanisms.

### 6. RESPONSIBILITIES:

- 6.1 General Manager, ~~Group Managers~~ ~~Directors~~ and Section Managers are responsible for implementing and complying with the Policy.
- 6.2 Governance Section Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

#### Policy

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## Policy



### 7. RELATED DOCUMENTS:

- 7.1 Local Government Act 1993
- 7.2 Public Interest Disclosure Act 1994
- 7.3 Ombudsman Act 1974
- 7.4 Independent Commission Against Corruption 1988
- 7.5 Government Information (Public Access) Act 2009
- 7.6 Code of Conduct
- 7.7 NSW Ombudsman - Managing Unreasonable Complainant Conduct Practice Manual.

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<b>EDRMS container No</b>	PSC2010-00008	<b>EDRMS record No</b>	24/63469
<b>Audience</b>	Port Stephens community and Council employees		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Governance Section Manager		
<b>Review timeframe</b>	3 years	<b>Next review date</b>	30 April 2027
<b>Adoption date</b>	12 July 2016		

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	16/02/1999	Assistant General Manager	Adopted by Council	069
2.0	14/12/2010	Executive Officer	Adopted by Council	410
3.0	09/04/2013	Executive Officer	Adopted by Council	088

## Policy

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## Policy



Version	Date	Author	Details	Minute No.
4.0	12/07/2016	Governance Manager	A major re-drafting in line with the model complaint handling policy of the NSW Ombudsman. Transferred into the new policy template and corporate branding.	209
4.1	14/08/2018	Governance Manager	Reviewed the policy, included numbering to each paragraph and updated version control. 3.9.2 – replaced RM8 with Records Management System	248

### Policy

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## Policy



Version	Date	Author	Details	Minute No.
4.2	26/03/2019	Governance Section Manager	<p>Reviewed policy and updated version control.</p> <p>Policy owner title updated.</p> <p>1.1, 3.3.2, 3.4.4, 3.5.8, 3.6.5, 3.7.2, 3.7.3, 3.7.5, 3.7.7, 3.8.2, 3.9.2, 3.9.5, 3.9.6, 4.1 Definition – 'complaint' and 'service request' – all dot points removed and replaced with alpha listing for ease of reference.</p> <p>Included numbering at 3.3.6.</p> <p>3.5.13 – deleted numbering.</p> <p>4.1 – Definition 'Complaint' c) updated.</p> <p>6.2 – Governance Section Manager title updated.</p>	064

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## Policy



Version	Date	Author	Details	Minute No.
4.3	27/4/2021	Governance Section Manager	<p>The policy was transferred into new policy template and updated version control.</p> <p>Minor review to the policy at:</p> <p>1.1 – change to reflect policy title.</p> <p>1.2, 5.1, 6.1 – replace “this” with “the”.</p> <p>1.2 – update to reflect purpose of the policy.</p> <p>2.1 – replace ‘have’ with ‘has’.</p> <p>3.3.2 – replace “Charter” with “Framework”.</p> <p>3.3.3 – replace ‘multiples’ with ‘multiple’.</p> <p>3.4.12 – insert ‘will’.</p> <p>3.6.4 – include”, where appropriate”.</p> <p>3.7.6 – remove italics.</p> <p>3.8.4 – insert new paragraph</p> <p>3.9.1 – include “Electronic Document” and “the”.</p>	100

### Policy

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## Policy



Version	Date	Author	Details	Minute No.
4.4		Governance Section Manager	<p>Reviewed the policy and updated version control.</p> <p>1.1, 1.2, 2.3, 4.1, 5.1 – remove the capital P</p> <p>3.3.5 – removed 'to you'</p> <p>3.3.6 – added 'make and'</p> <p>3.3.7 – Removed 'may' and added 'is able to'</p> <p>3.5.5 – removed 'to we will try to arrange' and added 'it is Council's preference' and 'Council will ensure it has the consent and agreement of the parties involved before doing so.'</p> <p>3.5.9 – capitalise the P in policy</p> <p>3.6.5 – added 'information'</p> <p>3.9.2 – added sub clause (f).</p> <p>6.1 – strike through 'Group Managers' and replace with 'Directors'. Remove the capital 'P' in Policy.</p> <p>7.7 added a full stop as it's the last listed document.</p>	XX

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**ITEM NO. 5**

**FILE NO: 24/63885  
EDRMS NO: A2004-0195**

**POLICY REVIEW: PECUNIARY INTEREST RETURNS**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Pecuniary Interest Returns - Lodgement Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Pecuniary Interest Returns – Lodgement Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Pecuniary Interest Returns – Lodgement Policy dated 27 April 2021, Minute No. 101 should no submissions be received.

---

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Pecuniary Interest Returns – Lodgement Policy (Policy).

The Policy provides a framework for management and compliance of the Local Government Act 1993 with regard to councillors and designated persons' returns.

The Policy has been reviewed as part of Council's ongoing policy review program.

The Policy is presented for Council's consideration.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Governance	Deliver governance services and internal audit program

**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that in the absence of a policy framework, pecuniary interest returns may not be lodged on time and in accordance with the Code of Conduct.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

Internal

The Executive Team has been consulted to seek management endorsement.

External

In accordance with local government legislation, the revised Pecuniary Interest Returns Policy will go on public exhibition for 28 days.



**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Pecuniary Interest Returns - Lodgement Policy. [↓](#)

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 5 - ATTACHMENT 1      PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.**

## Policy



**FILE NO:**            **A2004-0195**

**TITLE:**            **PECUNIARY INTEREST RETURNS - LODGEMENT**

**OWNER:**           **GOVERNANCE SECTION MANAGER**

**1.    PURPOSE:**

- 1.1 The purpose of the Pecuniary Interest Returns – Lodgement Policy (the 'Policy') is to ensure compliance with the provision of the Code of Conduct, as amended.
- 1.2 The Code of Conduct includes pecuniary interest responsibilities of the Mayor, Councillors and those staff identified as designated persons under the Act.

**2.    CONTEXT/BACKGROUND:**

- 2.1 The Local Government Act 1993 requires Council to adopt a Code of Conduct. The Code of Conduct incorporates the pecuniary interest provisions, which requires the Mayor, Councillors and designated persons to:
  - a) make a disclosure within three months of being elected to Council or becoming a designated person, and
  - b) make an annual disclosure after June 30 each year and before September 30 of the same year, and
  - c) keep the return up to date and ensure changes are made within three months of becoming aware of the changes.

**3.    SCOPE:**

- 3.1 In May each year a report will be submitted to Council listing the Mayor, Councillors and designated persons.
- 3.2 Mayor/Councillors and designated persons will be provided with an information brochure, copy of previous return and an original pecuniary interest form by the 15 July of each year.
- 3.3 The information brochure should include:
  - a) Responsibilities of Councillors and designated persons under the Act.
  - b) Information required on the pecuniary interest form.
  - c) Acceptable method of completing the pecuniary interest form.
  - d) Responsibilities of staff processing the forms.
  - e) Due date.
  - f) Consequences of late returns.

Policy

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## ITEM 5 - ATTACHMENT 1 PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.

## Policy



- 3.4 Monthly reminders to be sent to designated persons if they have not forwarded their returns – including a final reminder on or around 23 September.
- 3.5 All returns should be lodged with the General Manager or **Governance Section** ~~Executive Administration Coordinator~~ no later than on 30 September of each year.
- 3.6 Upon receipt of returns the **General Manager or member of the Governance Section** ~~Executive Administration Coordinator~~ will:
  - a) Provide written receipt to the Mayor/Councillor or designated person and a copy filing in the records management system (EDRMS).
  - b) Check the return to ensure that it has been completed (to best of your knowledge) particularly that it has been dated and signed.
  - c) **The General Manager or member of the Governance Section will** ~~Executive Administration Coordinator~~ to complete the date the return was received.
  - d) File the return in the Pecuniary Interest Register.
- 3.7 Under no circumstances is a third party (for example a staff member) to complete pecuniary interest returns on behalf of the Mayor/Councillor or a designated person.
- 3.8 Should the Mayor/Councillors or designated persons require a computer print-out of their property or properties they should formally request the **General Manager or member of the Governance Section** ~~Executive Administration Coordinator~~ to provide a computer printout of property/s owned in the local government area. Once the computer property print-out is obtained, the computer print-out should be transcribed by the Mayor/Councillor or designated person onto the form or on to an attachment (other than Council's original computer print-out).
- 3.9 Forms are to be made available from the General Manager's Office from 30 June each year.
- 3.10 All lodged returns are to be tabled at the first Council meeting after 30 September together with a report identifying any failures to lodge.
- 3.11 **The General Manager or their delegate is required to** report to the Office of Local Government any person who fails to lodge a Return required by the due date.

## 4. DEFINITIONS:

- 4.1 An outline of the key definitions of terms included in the policy.

Act

Local Government Act 1993.

## Policy

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ITEM 5 - ATTACHMENT 1  
POLICY.

## PECUNIARY INTEREST RETURNS - LODGEMENT

## Policy



Code of Conduct	Port Stephens Council code of Conduct.
Councillor	A councillor of Port Stephens.
Designated person	An employee, volunteer, contractor of Port Stephens Council.
Mayor	The Mayor of Port Stephens.
Pecuniary interest	Is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

**5. STATEMENT:**

5.1 The objectives of this Policy are to:

- a) inform the Mayor, Councillors and all designated persons of their responsibilities under the Act.
- b) provide transparency for the community.
- c) assist the Mayor, Councillors and all designated persons to identify potential areas of conflict of interest.

**6. RESPONSIBILITIES:**

- 6.1 The Governance Section Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the Policy.
- 6.2 The Mayor, Councillors and designated persons are responsible for complying with the Policy.
- 6.3 The Governance Section Executive Administration Coordinator is responsible for assisting with the implementation of the Policy.

**7. RELATED DOCUMENTS:**

- 7.1 Local Government Act 1993
- 7.2 Code of Conduct
- 7.3 Pecuniary Interest Register

## Policy

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## ITEM 5 - ATTACHMENT 1 PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.

## Policy



## CONTROLLED DOCUMENT INFORMATION:

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<b>EDRMS container No</b>	A2004-0195	<b>EDRMS record No</b>	21/150620
<b>Audience</b>	Mayor, Councillors and designated persons.		
<b>Process owner</b>	Governance Section Manager.		
<b>Author</b>	Governance Section Manager.		
<b>Review timeframe</b>	3 years	<b>Next review date</b>	30 April 2027
<b>Adoption date</b>	11 February 2014		

## VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	09/05/1995	Assistant General Manager	Adopted by Council.	185
2.0	19/10/2004	Governance Officer	Adopted by Council.	375
3.0	11/02/2014	Executive Officer	Adopted by Council.	018
4.0	10/05/2016	Governance Manager	Transfer policy into the new policy template.	119
5.0	22/05/2018	Governance Manager	Reviewed the policy, included numbering to each paragraph and updated the version control. 1.1 – included to the name of the policy. 3.5 – removed reference to timing. 3.6.1 – replaced the wording (RM8) with (EDRMS). 3.11 - replaced the wording 'Division of Local Government' with 'Office of Local Government'.	135

## Policy

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## ITEM 5 - ATTACHMENT 1 PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.

## Policy



Vers ion	Date	Author	Details	Minute No.
6.0	26/03/2019	Governance Section Manager	<p>Reviewed the policy and version control: Policy owner updated to Governance Section Manager.</p> <p>1 – updated to remove reference to the Local Government Act and replace with Code of Conduct.</p> <p>2 – removed Chapter 14 reference and included Code of Conduct.</p> <p>2.1 – Deleted and replaced with a new paragraph and included a), b) and c).</p> <p>3.1 – updated to include Mayor and Councillors.</p> <p>3.2, 3.6, 3.7, 3.8 – updated to include the Mayor.</p> <p>3.3 and 3.6 – bullet points replace with alpha listing.</p> <p>3.11 – removed section 449 and inserted 'the due date'.</p> <p>4.1 – updated to include Code of Conduct, Councillor and Mayor.</p> <p>6.1 – updated title to Governance Section Manager.</p>	065
6.1	27/04/2021	Governance Section Manager	<p>The policy was transferred into new policy template and updated version control.</p> <p>Minor review to the policy at:</p> <p>2.1 – replaced clause.</p> <p>3.6 e) – removed.</p>	101

## Policy

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## ITEM 5 - ATTACHMENT 1      PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.

## Policy



Vers ion	Date	Author	Details	Minute No.
6.2		Governance Section Manager	<p>Reviewed the policy and version control.</p> <p>3.5 – Remove 'Executive Administration Coordinator' and replace with 'Governance Section'.</p> <p>3.6 – Remove 'Executive Administration Coordinator to' and replace with 'General Manager or member of the Governance Section'.</p> <p>3.8 – Remove 'Executive Administration Coordinator' and replace with 'General Manager or member of the Governance Section'.</p> <p>3.11 – Added "The General Manager or their delegate is required to"</p> <p>5.1, 6.1, 6.2, 6.3 – Removed capital P and replaced with small p</p> <p>6.3 – Remove 'Executive Administration Coordinator' and replace with 'Governance Section'</p>	XX

## Policy

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**ITEM NO. 6**

**FILE NO: 24/63964  
EDRMS NO: PSC2011-02442**

**POLICY REVIEW: WORKING TOGETHER AND PROVISION OF INFORMATION**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Working Together and Provision of Information Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Working Together and Provision of Information Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Working Together and Provision of Information Policy dated 27 April 2021, Minute No. 99 should no submissions be received.

---

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Working Together and Provision of Information Policy (Policy) shown at **(ATTACHMENT 1)**.

This Policy seeks to provide Council officials with clarity in respect to their respective obligations and responsibilities in dealing with each other.

The Policy only relates to interaction and provision of information between Council officials.

The Policy has been reviewed as part of Council's ongoing policy review program.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Governance	Deliver governance services and internal audit program



**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Policy has been developed to meet requirements of the Office of Local Government and the Code of Conduct. The Policy is based around the Office of Local Government's Model Councillor and Staff Interaction Policy.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council officials may interact inappropriately without a policy framework in place.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no sustainability implications.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

Internal

The Executive Team has been consulted to seek management endorsement.

External

In accordance with local government legislation, the revised Working Together and Provision of Information Policy will go on public exhibition for 28 days.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Working Together and Provision of Information Policy. [↓](#)

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

# ITEM 6 - ATTACHMENT 1 WORKING TOGETHER AND PROVISION OF INFORMATION POLICY.

## Policy



**FILE NO:** PSC2011-02442

**TITLE:** WORKING TOGETHER AND PROVISION OF INFORMATION

**OWNER:** GOVERNANCE SECTION MANAGER

### 1. PURPOSE:

- 1.1 The Working Together and Provision of Information Policy (the policy) seeks to provide Council officials with clarity in respect to their respective obligations and responsibilities in dealing with each other.
- 1.2 It is recognised that interaction between Council officials may in certain circumstances have the potential to lead to unacceptable behaviours, and it is necessary to document an understanding about what to do if this occurs.
- 1.3 Employees should be aware that the Mayor/Councillors are elected to represent the community, to provide community leadership and guidance, and to facilitate communication between the community and Council. Employees should provide assistance to the Mayor/Councillors in fulfilling their role in accordance with this Policy and the Code of Conduct.
- 1.4 The Mayor and Councillors should be aware that employees have a legitimate right and responsibility to maintain professional integrity and should not be subject to undue pressure. The Mayor and Councillors should avoid placing employees in difficult positions with requests for information and action.

### 2. CONTEXT/BACKGROUND:

- 2.1 Council is committed to providing an environment where the Mayor, all Councillors, employees, contractors, volunteers and customers are treated with respect, dignity and courtesy. As such, we have the right to be in an environment that is free from unacceptable behaviours, and we all have a responsibility to ensure this happens.
- 2.2 To this end, the Local Government Act 1993 and the Model Code of Conduct require appropriate interaction between Council officials. The Mayor, Councillors and Council staff all have very different roles to play within Council.
- 2.3 The elected Council is responsible for policy making and strategic direction. The General Manager is responsible for the day to day administration of Council. Under the leadership of the General Manager, the Executive Team provides assistance to the General Manager in managing their respective areas of responsibility.

## Policy

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## ITEM 6 - ATTACHMENT 1 WORKING TOGETHER AND PROVISION OF INFORMATION POLICY.



### Policy

- 2.4 This Policy is not intended to limit any statutory and common law rights of the Mayor and Councillors' access to information; nor to limit their obligations as elected officials, but to provide an appropriate framework to work within.
- 2.5 Council is committed to a community partnership.
- 3. SCOPE:**
  - 3.1 The Mayor and Councillors, as elected officials, will at times be involved in obtaining information from, make representations to, or facilitate communication with, Council staff on behalf of constituents.
  - 3.2 The General Manager has nominated particular roles within Council, which the Mayor and Councillors are able to liaise directly with, to undertake their civic role. It is noted that Councillors are delegates on various committees such as 355 (c) Committees and as such will come into contact with staff other than those nominated. On such occasions, Councillors will be permitted to liaise with operational staff to assist with the operation of committees and groups, however contact should only be for the purpose of fulfilling committee obligations and not general operational matters.

#### Accessing Information by a Councillor

- 3.3 The Mayor or a Councillor will be provided with access to all relevant information relating to any matter before Council to ensure consideration can be given to any matter requiring a Council resolution. This will be conducted within the limits of the law such as, but not limited to, copyright and privacy legislation.
- 3.4 The General Manager has the right to refuse access to any documents the Mayor or a Councillor requests to view or obtain a copy of. Some of the limitations of access to certain Council records will be due to:
  - a) a record that has been provided on a confidential basis and has been explicitly marked 'confidential' or is confidential under the Public Interests Disclosure Act 1994, Independent Commission Against Corruption (ICAC) Act 1988 or any other applicable legislation.
  - b) the General Manager has reason to believe that there may be a potential conflict of interest; or
  - c) access would violate the right to privacy of a particular individual/s.
- 3.5 If the General Manager refuses to allow the Mayor or a Councillor to inspect, or be provided with, a copy of a Council record, a written reason for the refusal will be provided.

#### Policy

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## ITEM 6 - ATTACHMENT 1 WORKING TOGETHER AND PROVISION OF INFORMATION POLICY.

### Policy



- 3.6 If the Mayor or a Councillor seeks access to information outside their civic role, the request will be considered an application under the Government Information (Public Access) Act 2009.
- 3.7 If staff are unsure whether to provide the Mayor or a Councillor with information requested, or whether the request for action should proceed, staff should direct the matter to their ~~Group Managers~~ **Director**, the Public Officer or the General Manager for direction. Alternatively, the Mayor or the Councillor may be requested to direct their request through the General Manager's Office.
- 3.8 Should the Mayor or a Councillor be requested to direct their request through the General Manager's Office, the Mayor or a Councillor should not persist with their request through staff.

#### Mayor/Councillor requests

- 3.9 The Mayor and Councillors receive a large number of requests from residents seeking assistance of the Mayor/Councillors regarding a variety of Council functions. The Mayor and Councillors also at times seek further information on matters relating to their civic duties.
- 3.10 The Mayor and Councillors are able to lodge these requests verbally, by email or in writing. All requests will be logged in the Councillor Request System (CRM). This enables the request to be tracked and actions recorded. Generally all requests should be directed to the Senior Executive Assistant to ensure the request is logged and forwarded to the appropriate staff for action. This **P**olicy only extends to matters concerning the functions of an elected member where it is not covered by any other legislation and/or Council policy framework. Where the functions of an elected member is covered by other legislation and/or Council policy, the relevant legislation and/or Council policy will take precedence over this policy.
- 3.11 The Mayor and Councillors are responsible to ensure that they comply with any legislation that is imposed on Council such as (but not limited to) the Local Government Act 1993, the Privacy & Personal Information Protection Act 1998 and Copyright Act 1968 (Cth), Government Information (Public Access) Act 2009 and State Records Act 1998.
- 3.12 Only those employees nominated by the General Manager shall provide information to the Mayor/Councillors.
- 3.13 Generally, the Mayor or Councillors seeking to meet with nominated staff do so by way of an appointment and should not expect that staff are readily available. The General Manager has the discretion to require the Mayor/Councillors to put requests in writing, or to lodge a Notice of Motion at a Council meeting.

#### Policy

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## Policy



- 3.14 The Mayor and Councillors should generally lodge requests for information or advice in writing to enable a response by the General Manager or a nominated person. All requests will form part of Council's records and will be filed/stored in accordance with the State Records Act 1998.
- 3.15 Any request for information or advice that is refused, a reason for the refusal will be provided in writing. If the Mayor or a Councillor is concerned about the refusal to provide the information or advice, the Mayor or Councillor can raise the matter with the General Manager (or the Mayor if the General Manager refused to provide the information). If the Mayor or Councillor continues to be concerned after enquiries they should lodge a legal Notice of Motion at a Council meeting.
- 3.16 The Mayor and Councillors must not seek to direct Council staff in the performance of their duties. Should the Mayor or a Councillor behave in this manner the staff member should direct the Mayor or Councillor to the ~~Group Managers~~ **Director** or the General Manager.
- 3.17 No Council official should take advantage of their official position to improperly influence the Mayor, Councillors, Council staff or delegates in the performance of their public or professional duties.
- 3.18 The Mayor or Councillors should only enter staff only areas, by invitation or by prior arrangements for the purpose of official business.
- 3.19 A listing of employees nominated by the General Manager to communicate with the Mayor or Councillors will be maintained by the General Manager and a copy will be provided to the elected Council.
- 3.20 Acceptable behaviours:
- Treat everyone with respect, courtesy and dignity;
  - Open and balanced communications;
  - Respecting the roles of the other person;
  - Be inclusive on all matters;
  - Always seek to problem solve rather than placing blame.
- 3.21 Unacceptable behaviours:
- Mayor/Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters.

### Policy

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## ITEM 6 - ATTACHMENT 1 WORKING TOGETHER AND PROVISION OF INFORMATION POLICY.

### Policy



- b) Council staff approaching Mayor/Councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters.
- c) Subject to clause 8.6 of Council's Code of Conduct, Council staff refusing to give information that is available to other Councillors, to a particular Councillor.
- d) Mayor/Councillors and administrators, who have lodged an application with the Council, discussing the matter with Council staff in staff only areas of the Council.
- e) Mayor/Councillors and administrators approaching members of local planning panels, or discussion on any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and Councillor has a right to be heard by the panel at the meeting.
- f) Mayor/Councillors and administrators being overbearing or threatening to Council staff.
- g) Council staff being overbearing or threatening to the Mayor/Councillors or administrators.
- h) Mayor/Councillors and administrators making personal attacks on Council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of the Code of Conduct in public forums including social media.
- i) Mayor/Councillors and administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make.
- j) Council staff providing ad hoc advice to the Mayor/Councillors and administrators without recording or documenting the interaction, as they would if the advice was provided to a member of the community.
- k) Council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals.
- l) Mayor/Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the Council associated with current or proposed legal proceedings, unless permitted to do so by the Council's General Manager or, in the case of the Mayor or administrator, unless they are exercising their functions under section 226 of the LGA.

(Extract from the Code of Conduct)

3.22 All reports of unacceptable behaviours will be dealt with in accordance with the Code of Conduct.

#### Access to Council Buildings

3.23 The Mayor and Councillors will be provided with 24 hour access to the Councillors room within the Administration Building. The Mayor will have 24 hour access to the Mayor's Office.

#### Policy

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ITEM 6 - ATTACHMENT 1  
INFORMATION POLICY.

## WORKING TOGETHER AND PROVISION OF

## Policy



- 3.24 Mayor/Councillors will be provided with access to the Administration Building public areas during business hours. Mayor/Councillors will only be provided with access to staff areas during business hours and in the presence of a staff member.
- 3.25 Mayor/Councillors will only be provided with access to the Committee rooms and training room after hours where a staff member is present.

**4. DEFINITIONS:**

- 4.1 An outline of the key definitions of terms included in the policy.

Council official	Is the Mayor, elected Councillor, an administrator, Council employee, contractor and volunteer.
Council staff/employee	An employee of Port Stephens Council performing duties in accordance with their role or under delegation.
Councillor	In accordance with section 232 (1) and (2) of the Local Government Act 1993.
Mayor	In accordance with section 226 of the Local Government Act 1993.
Record	Is any document that is written or printed material, sound recording, plan, map film, photograph, storage device, model, painting, disc or any other form of document that is held by Port Stephens Council.

**5. STATEMENT:**

- 5.1 The objectives of this Policy are to:

- Provide a documented process on how the Mayor and Councillors can access Council records.
- Ensure the Mayor and Councillors received advice to assist in undertaking their civic duties in an orderly and regulated manner.
- Ensure the Mayor and Councillors have access to all relevant Council employees necessary to assist with exercising their civic roles.

**6. RESPONSIBILITIES:**

- 6.1 The General Manager, ~~Group Managers~~ Directors and Section Managers are responsible for the implementation and compliance of the policy.
- 6.2 The Governance Section Manager is responsible for implementation, compliance, monitoring, evaluating, reviewing and providing advice on the policy.

## Policy

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# ITEM 6 - ATTACHMENT 1 WORKING TOGETHER AND PROVISION OF INFORMATION POLICY.

## Policy



### 7. RELATED DOCUMENTS:

- 7.1 Local Government 1993
- 7.2 Government Information (Public Access) Act 2009
- 7.3 State Records Act 1998
- 7.4 Copyright Act 1968 (Cth)
- 7.5 Independent Commission Against Corruption Act 1988
- 7.6 Code of Conduct.

### CONTROLLED DOCUMENT INFORMATION:

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<b>EDRMS container No</b>	PSC2011-02442	<b>EDRMS record No</b>	TBA
<b>Audience</b>	Elected Council and Council employees.		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Governance Section Manager		
<b>Review timeframe</b>	3 years	<b>Next review date</b>	30 April 2027
<b>Adoption date</b>	24 September 2013		

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	24/09/2013	Executive Officer	Adopted by Council	275
2.0	23/09/2014	Executive Officer	Adopted by Council	242
3.0	09/02/2016	Governance Manager	Transferred into the new policy template and corporate branding. Minor wording amendments.	022
3.1	13/02/2018	Governance Manager	Minor administrative updates to clarify when the policy is applicable under Mayor/Councillor request section.	017

## Policy

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## Policy



Version	Date	Author	Details	Minute No.
3.2	28 May 2019	Governance Section Manager.	Reviewed the policy, included numbering to each paragraph and updated the version control. Updated title of policy owner. 3.3 – added 'but not limited to' and 'legislation' deleting 'provisions'. 3.10 – updated Councillor support title. 3.21 – updated unacceptable behaviours to reflect the new Code of Conduct. 6.2 – updated Section Manager title.	112
3.3	27/4/2021	Governance Section Manager	The policy was transferred into new policy template and updated version control. Minor review to the policy at: 1.1 – included policy title. 4.1 – remove "Local Government Act 1993.	099
3.4		Governance Section Manager	Reviewed the policy and updated the version control. Minor grammatical changes. 2.2 – added 'all'. 3.4(a) – added 'any' and 'applicable'. 3.7 – updated Director title, removed reference to Group Manager 3.16 – updated Director title, removed reference to Group Manager 6.1 – updated Director title, removed reference to Group Manager	XX

## Policy

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**ITEM NO. 7**

**FILE NO: 24/64805  
EDRMS NO: A2004-0135**

## **PRIVACY MANAGEMENT PLAN**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

---

### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the Privacy Management Plan dated 25 August 2020, Minute No.164.
- 2) Endorse the revised Privacy Management Plan shown at **(ATTACHMENT 1)**.

---

## **BACKGROUND**

The purpose of this report is to seek Council adoption of the revised Privacy Management Plan (the 'PMP').

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

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

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

The Privacy and Personal Information Protection Act 1998 ('PPIPA') provides for the protection of personal information and for the protection of the privacy of individuals.

The Information and Privacy Commission provides a number of online resources and information to assist when reviewing the PMP. Council has accessed these resources when conducting this review.

The changes are relatively minor in nature, however, they assist with ongoing compliance with PPIPA:

- Addition of Council's obligations under the mandatory notification of data breaches scheme including organisational approach to managing privacy in accordance with the scheme.
- General inclusion of common examples of privacy matters Council encounters.

## ORDINARY COUNCIL - 9 APRIL 2024

- Including updated links throughout the document to Council's website for ease of the reader.
- Ensuring the document is in accordance with the corporate style guide.
- Updating references to Council policies and management directives.
- Conducted an overall administrative review, including version control consistent with the organisational approach.
- Additional sub-sections to Part 8 - 8.7, 8.8 and 8.9 have been included.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Governance	Deliver governance services and internal audit program

### FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to prepare a Privacy Management Plan under Section 33 of the Privacy and Personal Information Act 1998.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council would be in breach of the Privacy and Personal Information Act 1998, if the Privacy Management Plan is not adopted.	Low	Adopt the recommendations.	Yes

## ORDINARY COUNCIL - 9 APRIL 2024

There is a risk that Council may face compliance action without the Privacy Management Plan in place.	Low	Adopt the recommendations.	Yes
---	-----	----------------------------	-----

### SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

### CONSULTATION

Consultation with key stakeholders has been undertaken by the Governance Section, through the Information and Privacy Commission's on line resources.

The PMP is not required to be publicly exhibited.

### OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

### ATTACHMENTS

- 1) Privacy Management Plan. [↓](#)

### COUNCILLORS' ROOM/DASHBOARD

Nil.

### TABLED DOCUMENTS

Nil.



# Privacy Management Plan



council@portstephens.nsw.gov.au | 02 4988 0255

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## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

## TABLE OF CONTENTS

<b>Part 1 – Introduction .....</b>	<b>3</b>
1.1 What is “personal information”? .....	4
1.2 What is not “personal information”? .....	4
1.3 Application of this Plan .....	5
1.4 Personal Information held by Council .....	5
1.5 Applications for suppression in relation to general information (not public registers). .....	6
1.6 Caution as to unsolicited information .....	6
<b>Part 2 – Public Registers .....</b>	<b>7</b>
2.1 Public registers, the PPIPA and the HRIPA .....	9
2.2 Effect on section 6 of the GIPA Act .....	9
2.3 Where some information in the public register has been published .....	10
2.4 Disclosure of personal information contained in the public registers .....	10
2.5 Applications for access to own records on a public register .....	11
2.6 Applications for suppression in relation to a public register .....	11
<b>Part 3 – The Information Protection Principles .....</b>	<b>13</b>
<b>Part 4 – Health Privacy Principles .....</b>	<b>42</b>
<b>Part 5 – Implementation of the Privacy Management Plan .....</b>	<b>62</b>
5.1 Training Seminars/Induction .....	62
5.2 Responsibilities of the Privacy Contact Officer .....	62
5.3 Distribution of information to the public .....	63
<b>Part 6 – Data breaches .....</b>	<b>64</b>
6.1 What is a data breach? .....	64
6.2 What is unauthorised access and unauthorised disclosure? .....	64
6.3 What are the potential impacts of a data breach? .....	65
6.4 Who decides if you’ve suffered serious harm? .....	65
6.5 Your right to be notified of a breach of your personal information .....	65
6.6 What do I do if I become aware of a suspected data breach? .....	66
6.7 Where can I go to get more information about the scheme and how Port Stephens Council manage it? .....	66
<b>PART 7 – Internal review .....</b>	<b>67</b>
7.1 How does the process of Internal Review operate? .....	67
7.2 What happens after an Internal Review? .....	67
NCAT can be contacted as follows: .....	68
<b>Part 8 – Other Relevant Matters .....</b>	<b>69</b>
8.1 Contracts with consultants and other private contractors .....	69
8.2 Confidentiality .....	69
8.3 Misuse of personal or health information .....	69
8.4 Regular review of the collection, storage and use of personal or health information .....	69
8.5 Regular review of Privacy Management Plan .....	69
8.6 Alternative complaints process .....	69
8.7 Memorandum of Understandings or Referral Arrangements .....	70
8.8 Offences .....	70
8.9 Accessibility .....	71
8.10 Further information .....	71
<b>Part 9 – Appendices .....</b>	<b>72</b>
Appendix 2: Privacy Disclaimer template .....	73

## **PART 1 – INTRODUCTION**

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

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

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

The Privacy and Personal Information Protection Act 1998 (“PPIPA”) provides for the protection of personal information and for the protection of the privacy of individuals.

Section 33 of the PPIPA requires all councils to prepare a Privacy Management Plan (the “Plan”) to deal with:

- the devising of policies and practices to ensure compliance by the Council with the requirements of the PPIPA and the Health Records and Information Privacy Act 2002 (“HRIPA”);
- the dissemination of those policies and practices to persons within the Council;
- the procedures that the Council proposes for internal review of privacy complaints;
- such other matters as are considered relevant by the Council in relation to privacy and the protection of personal information held by it.

This Plan has been prepared for the purpose of section 33 of the PPIPA.

PPIPA provides for the protection of personal information by means of 12 Information Protection Principles. Those principles are listed below:

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

Those principles are *modified* by the Privacy Code of Practice for Local Government (“the Code”) made by the Attorney General. To date there has been no Health Records and Information Privacy Code of Practice made for Local Government.



**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

The Privacy Code has been developed to enable Local Government to fulfil its statutory duties and functions under the Local Government Act 1993 (the “LGA”) in a manner that seeks to comply with the PPIPA.

This Plan outlines how the Council will incorporate the 12 Information Protection Principles into its everyday functions.

This Plan should be read in conjunction with the Privacy Code of Practice for Local Government.

This plan should also be read in conjunction with Council’s endorsed policies and implemented procedures, all of which can be accessed by clicking [here](#).

Nothing in this Plan is to:

- affect any matter of interpretation of the Codes or the Information Protection Principles and the Health Privacy Principles as they apply to the Council;
- affect any obligation at law cast upon the Council by way of representation or holding out in any manner whatsoever;
- create, extend or lessen any obligation at law which the Council may have.

This Plan is designed to introduce policies and procedures to maximise compliance with the PPIPA and the HRIPA.

Where the Council has the benefit of an exemption, it will nevertheless describe procedures for compliance in this Plan. By doing so, it is not to be bound in a manner other than that prescribed by the Codes.

Council collects, stores and uses a broad range of information. A significant part of that information is personal information. This Plan applies to that part of the Council’s information that is personal information.

It may mean in practice that any information that is not personal information will receive treatment of a higher standard; namely treatment accorded to personal information where the information cannot be meaningfully or practicably separated.

### **1.1 What is “personal information”?**

“Personal information” is defined in section 4 of the PPIPA as follows:

Personal information is defined to mean information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This information can be on a database and does not necessarily have to be recorded in a material form.

### **1.2 What is not “personal information”**

“Personal information” does not include “information about an individual that is contained in a publicly available publication”. Personal information, once it is contained in a publicly available publication, ceases to be covered by the PPIPA.

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

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

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

Council considers the following to be publicly available publications:

- An advertisement containing personal information in a local, city or national newspaper;
- Personal information on the Internet;
- Books or magazines that are printed and distributed broadly to the general public;
- Council Business papers or that part that is available to the general public;
- Personal information that may be a part of a public display on view to the general public.

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

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

### **1.3 Application of this Plan**

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

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

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

### **1.4 Personal Information held by Council**

The Council holds personal information concerning Councillors, such as:

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

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

- rates records; and
- DA applications and objections; and
- various types of health information (see page 37 for detailed examples).

The Council holds personal information concerning its employees, such as recruitment material, leave and payroll data, personal contact information, performance management plans, disciplinary matters, pecuniary interest returns, wage and salary entitlements and health information (such medical certificates and workers compensation claims).

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

Under section 739 of the *Local Government Act 1993* ("LGA") a person can make an application to suppress certain material that is available for public inspection in circumstances where the material discloses or would disclose the person's place of living if the person considers that the disclosure would place the personal safety of the person or their family at risk.

Section 739 of the LGA relates to publicly available material other than public registers. As such, it limits disclosure in those circumstances where an application for suppression is successful. An application for suppression must be verified by statutory declaration and otherwise meet the requirements of section 739. When in doubt, Council will err in favour of suppression.

For more information regarding disclosure of information (other than public registers) see the discussion of IPPs 11 and 12 in Part 3 of this Plan. For information regarding suppression of information on *public registers*, see Part 2 of this Plan.

### **1.6 Caution as to unsolicited information**

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

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

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

## **PART 2 – PUBLIC REGISTERS**

A public register is defined in section 3 of the PPIPA:

“...public register means a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).”

A distinction needs to be drawn between “public registers” within the meaning of Part 6 of the PPIPA and “non-public registers”. A “non-public register” is a register but it is not a “public register” for the purposes of the PPIPA. For example, the register might not be publicly available or it may not contain personal information.

Disclosure in relation to public registers must comply with Part 6 of the PPIPA and the Privacy Code of Practice. Personal information cannot be accessed by a person about another person unless the personal information is contained in a public register. Where personal information is contained in a public register, then Part 6 of the PPIPA applies to determine whether access to that information will be given to another person.

Disclosure in relation to all other personal information must comply with the Information Protection Principles as outlined in Part 2 of this Plan and the Privacy Code where it includes personal information that is not published.

The following list identifies public registers held by Council.

Act / Regulation	Section		Purpose	Contact
*Local Government Act	53	Land Register	Identify land vested in Council or under Council's control	Register can be accessed from Council's <a href="#">website</a> .
	113	Record of Approvals	Identify approvals granted under the Act	Development Services.
	449-450A	Register of Pecuniary Interests	Identify pecuniary interest of Councillors and designated persons	Councillor returns are available on Council's <a href="#">website</a> . For other designated persons returns please contact Council.
Environmental Planning and Assessment Act	100	Register of Consents and Approvals	Identify approvals, consents and related appeals under the Act	Some information is available from Council's <a href="#">website</a> or alternately from Development Services.
	149G	Record of Building Certificates	Identify building certificates	Development Services

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

Act / Regulation	Section		Purpose	Contact
Protection of the Environment Operations Act	308	Public register of licences	Identify licences granted under the Act	Development Services/Governance.
Impounding Act	30 & 31	Record of Impounding	Identify impounding action by Council	Development Services/Governance.
Government Information (Public Access) Act	25	Disclosure Log of Access Applications	Identify access applications where there is a public interest and Council has determined to provide access to the information	Register can be accessed from Council's <a href="#">website</a> .
	27	Register of Government Contracts	Identify Council contracts that have (or are likely to have) a value of \$150,000 or more	Register can be accessed from Council's <a href="#">website</a> .
Government Information (Public Access) Regulation 2009	Sch1. 1(3)(d)	Register of graffiti removal	Identify graffiti removal work	Facilities and Services
	Sch1. 1(3)(e)	Register of current political donations	Identify current political donations	Register can be accessed from a link on Council's <a href="#">website</a> .
	Sch1. 1(3)(e)	Register of planning decisions	Identify voting on planning matters of the elected council	Register can be accessed from Council's <a href="#">website</a> .
Local Government Act	377-378	Register of Delegations	Identify functions delegated by the General Manager to Council Officers	Register can be accessed from Council's <a href="#">website</a> .
	602	**Rates Record	In relation to a parcel of land, identify: <ul style="list-style-type: none"> <li>the value</li> <li>rate liability</li> </ul> the owner or lessee	Register can be sought by informal request under the GIPA Act.

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

\*\*Note – owner contact information will not be provided.

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

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.

A list of other registers held by Council is available from Council's website. It should be noted that a number of these registers are not public registers. The Information Protection Principles, this Plan, any applicable Codes and the PPIPA apply to those registers or databases.

**2.1 Public registers, the PPIPA and the HRIPA**

A public register generally confers specific rights or privileges, a benefit, or status, which would not otherwise exist. It may be required by law to be made publicly available or open to public inspection, or it is simply made publicly available or open to public inspection (whether or not payment is required).

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

Section 57 of the PPIPA requires very stringent controls over the disclosure of personal information contained in a public register. It provides broadly that where Council is responsible for keeping a public register, it will not disclose any personal information kept in that register unless it is satisfied that the information is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.

Section 57 (2) provides that in order to ensure compliance with section 57(1), a Council may require any person who applies to inspect personal information contained in the public register to give particulars in the form of a statutory declaration as to the proposed use of that information. (Form at Appendix 1 may be used as a guide)

Council also needs to consider the Privacy Code of Practice for Local Government which has the effect of modifying the application of Part 6 of the PPIPA (the "public register" provisions).

If the stated purpose of the applicant does not conform with the purpose for which the public register is kept, access to the information sought will not be given.

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

**2.2 Effect on section 6 of the GIPA Act**

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

1. If a register is listed in Schedule 1 of the GIPA Regulation, access must not be given except in accordance with section 57(1) of the PPIPA.

## ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.

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

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

### **2.3 Where some information in the public register has been published**

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

For example, the Register of Consents and Approvals held by Council under section 100 of the Environmental Planning and Assessment Act requires Council to advertise or publish applications for development consent.

When Council publishes the address of the property, it may identify the owner. The personal information that has not been published and any applications not advertised or that have been rejected or withdrawn (and hence also not published) will be treated as a public register under PPIPA.

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

Registers should not be published on the internet.

### **2.4 Disclosure of personal information contained in the public registers**

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

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

**Secondary purpose of all Public Registers**

Due to the general emphasis (to be found in the LGA and elsewhere) on local government processes and information being open and accountable, it is considered that a secondary purpose for which all public registers are held by Council includes the provision of access to members of the public. Therefore disclosure of specific records from public registers would normally be considered to be allowable under section 57 of the PPIPA.

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

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

**Other Purposes**

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

**2.5 Applications for access to own records on a public register**

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

**2.6 Applications for suppression in relation to a public register**

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

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

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

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



**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

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.

**PART 3 – THE INFORMATION PROTECTION PRINCIPLES****3.1 Information Protection Principle 1 – Section 8****Section 8 Collection of personal information for lawful purposes**

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

<b>The Privacy Code of Practice for Local Government</b>	<b>Council Policy</b>
The Code makes no provision to depart from the requirements of this principle.	<p>Council will only collect personal information for a lawful purpose as part of its proper functions. The LGA governs Council's major obligations and functions.</p> <p>Section 22 of the LGA provides other functions under other Acts. Some of those Acts are as follows:</p> <ul style="list-style-type: none"> <li>• Community Land Development Act 1989</li> <li>• Companion Animals Act 1998**</li> <li>• Conveyancing Act 1919</li> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Fire Brigades Act 1989</li> <li>• Fluoridation of Public Water Supplies Act 1957</li> <li>• Food Act 2003</li> <li>• Impounding Act 1993</li> <li>• Library Act 1939</li> <li>• Protection of the Environment Operations Act 1997</li> <li>• Public Health Act 2010</li> <li>• Recreation Vehicles Act 1983</li> <li>• Roads Act 1993</li> <li>• Rural Fires Act 1997</li> <li>• State Emergency Service Act 1989</li> <li>• Strata Schemes Development Act 2015</li> <li>• Strata Schemes Management Act 2015</li> <li>• Swimming Pools Act 1992</li> </ul> <p>This list is not exhaustive.</p>

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

Additionally, the exercise by Council of its functions under the LGA may also be modified by the provisions of other Acts. Some of those Acts follow:

- Coastal Management Act 2016;
- Environmental Offences and Penalties Act 1989;
- Government Information (Public Access) Act 2009;
- Heritage Act 1977;
- State Emergency and Rescue Management Act 1989;
- Unclaimed Money Act 1995;
- Unhealthy Building Land Act 1990.

The circumstances under which Council may collect information, including personal information, are varied and numerous. Examples of circumstances in which Council may collect personal information include:

- Making, receiving or investigating a complaint
- For recruitment purposes
- Responding to or conducting surveys
- Rating information
- Processing general enquiries
- Issuing approvals or orders
- CCTV Footage

Council will not collect any more personal information than is reasonably necessary for it to fulfil its proper functions.

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

#### Companion Animals Act

Collection of information under the Companion Animals Act and Council's use of the Companion Animals Register should be guided by the Deputy Secretary of Local Government, Planning and Policy guidelines, which have been developed with the PPIPA in mind.

#### Role of the Privacy Contact Officer

In order to ensure compliance with Information Protection Principle 1, internet contact forms, rates notices, application forms of whatsoever nature, or written requests by which personal information is collected by Council; will be referred to the Privacy Contact Officer prior to adoption or use. The Privacy Disclaimer at Appendix 2 is to be included on all forms and other documents where information is being solicited from individuals.

The Privacy Contact Officer will also provide advice as to:

1. Whether the personal information is collected for a lawful purpose;

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

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

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

### 3.2 Information Protection Principle 2 – Direct Collection

#### Section 9 Collection of personal information directly from individual

A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:

- (a) the individual has authorised collection of the information from someone else, or
- (b) in the case of information relating to a person who is under the age of 16 years—the information has been provided by a parent or guardian of the person.

The Privacy Code of Practice for Local Government	Council Policy
<p>The Code makes provision for Council to depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.</p>	<p>The compilation or referral of registers and rolls are the major means by which the Council collects personal information. For example, the information the Council receives from NSW Land Registry Services would fit within section 9(a) above.</p> <p>Other means include forms that customers may complete and lodge with Council for development consent, companion animal registration, applications for specific inspections or certifications or applications in respect of tree preservation orders.</p> <p>In relation to petitions, the Council will treat the personal information contained in petitions in accordance with PPIPA.</p> <p>Where Council or a Councillor requests or requires information from individuals or groups, that information will be treated in accordance with PPIPA.</p> <p>Council regards all information concerning its customers as information protected by PPIPA. Council will therefore collect all personal information directly from its customers except as provided in section 9 or under other statutory exemptions or Codes of Practice. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.</p> <p>Where Council anticipates that it may otherwise need to collect personal information indirectly it will first obtain the authorisation of each individual under section 9 (a) of the PPIPA.</p>

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**External and related bodies

Each of the following will be required to comply with this Plan, any applicable Privacy Code of Practice, and the PPIPA:

- Council owned businesses
- Council consultants
- Private contractors
- Council committees

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

Where any of the above collect personal information on behalf of Council or in relation to the performance of their activities, that body or person will be required to:

- obtain a written authorisation and consent to that collection; and
- notify those persons in accordance with Information Protection Principle 3 as to the intended recipients and other matters required by that principle.

Council owned businesses, committees and private contractors or consultants must abide by this Plan, the Code and the PPIPA under the terms of their incorporation by Council or by contract.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 2.

Existing statutory exemptions under the Act

Compliance with Information Protection Principle 2 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in very obvious and limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(2) of the PPIPA permits non-compliance with Information Protection Principle 2 if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal.

Section 24(4) of the PPIPA extends the operation of section 24(1) to councils and permits non-compliance with Information Protection Principle 2 if a council is:

- (i) investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency; and

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

- (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 2 where the agency is lawfully authorised or required not to comply with the principle.

- (iii) Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 2 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Section 26(1) of the PPIPA permits non-compliance with Information Protection Principle 2 if compliance would prejudice the interests of the individual concerned.

Further Explanation regarding IPP 2

Where Council cannot collect personal information directly from the person, it will ensure one of the following:

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

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

### 3.3 Information Protection Principle 3 - Requirements when collecting personal information

#### Section 10 Requirements when collecting personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:

- (a) the fact that the information is being collected,
- (b) the purposes for which the information is being collected,
- (c) the intended recipients of the information,
- (d) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,
- (e) the existence of any right of access to, and correction of, the information,
- (f) the name and address of the agency that is collecting the information and the agency that is to hold the information.

The Privacy Code of Practice for Local Government	Council Policy
<p>The Code makes provision for Council to depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be, or may be, conferred upon the person to whom the information relates.</p>	<p>Where Council proposes to collect personal information directly from the person, it will inform that person that the personal information is being collected, what is done with that information and who the intended recipients will be.</p> <p>Council apply the Privacy disclaimer (see Appendix 2) to all applications to inform individuals and to meet the requirements of Information Protection Principle 3 (IPP 3).</p> <p>The following are examples of application procedures that will require a Privacy disclaimer in accordance with IPP 3:</p> <ul style="list-style-type: none"> <li>• Lodging Development Applications;</li> <li>• Lodging objections to Development Applications;</li> <li>• Lodging applications for approval under the LGA; and</li> <li>• When collecting an impounded item.</li> </ul> <p>In relation to the Privacy Disclaimer that may be attached to a Development Application provided to objectors, it could be stated that objectors have a right to remain anonymous if they so choose. However, should they need to substantiate their objections, anonymous objections may be given less weight (or no weight) in the overall consideration of the Application.</p>



**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**Post - Collection

Where Council collects personal information indirectly from another public sector agency in respect of any one of its statutory functions, it will advise those individuals that it has collected their personal information by letter. The letter should ensure the requirements of IPP 3 are met.

A common example of the collection of information from another public sector agency is the NSW Land Registry Services. Council receives information as to new ownership changes when property is transferred from one owner to the next.

External and related bodies

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

- Council owned businesses
- Council consultants
- Private contractors
- Council committees

Council will seek to contractually bind each of these bodies or persons to comply with the Information Protection Principle 3.

Where any of the above collect personal information on behalf of Council or in relation to the performance of their activities, that body or person will be required to notify those persons in accordance with Information Protection Principle 3 as to the intended recipients and other matters required by that principle.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 3.

Existing statutory exemptions under the Act

Compliance with Information Protection Principle 3 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

The relevant statutory exemptions follow:

Section 23(3) permits non-compliance with Information Protection Principle 3 where information is collected for law enforcement purposes. Law enforcement means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person.

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

Section 24(4) of the PPIPA extends the operation of section 24(1) to councils and permits non-compliance with Information Protection Principle 3 if a council is:

- (i) investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) if compliance might detrimentally affect (or prevent the exercise of) the Council's complaint handling or investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 3 where the agency is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 3 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Section 26(1) of the PPIPA permits non-compliance with Information Protection Principle 3 if compliance would prejudice the interests of the individual concerned.

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

Disclosure of information of research purposes

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

### 3.4 Information Protection Principle 4 - Other requirements relating to collection of personal information

#### Section 11 Other requirements relating to collection of personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

- (a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and
- (b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

The Privacy Code of Practice for Local Government	Council Policy
The Code makes no provision to depart from this principle.	<p>Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions.</p> <p>Council collects personal information through the various forms that customers may complete and lodge with Council. Before adoption of a new form, a draft form will be reviewed for compliance with Information Protection Principle 4 by the EEO Officer, Council's solicitor, Public Officer or other suitable person. Should Council have any residual doubts, the opinion of the Office of the Privacy Commissioner NSW will be sought.</p>

### 3.5 Information Protection Principle 5 - Retention and security of personal information

#### Section 12 Retention and security of personal information

A public sector agency that holds personal information must ensure:

- (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and
- (c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
- (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

The Privacy Code of Practice for Local Government	Council Policy
The Code makes no provision to depart from this principle.	<p>Council may comply with this principle by using any or all of the following or similar documents:</p> <ul style="list-style-type: none"> <li>• Council's ICT Systems Access and Cyber Security and Information Access Management Directive. This document defines the minimum requirements for controlling access to Council's systems and information to ensure appropriate access to systems can be provided whilst adequate protection from exposure to cyber threats is provided.</li> <li>• Council's Records Management – Management Directive</li> <li>• General Records Disposal Schedule for Local Government.</li> </ul>

#### Disclosure of information of research purposes

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

### 3.6 Information Protection Principle 6 - Information held by agencies

#### Section 13 Information about personal information held by agencies

A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the agency holds personal information, and
- (b) whether the agency holds personal information relating to that person, and
- (c) if the agency holds personal information relating to that person:
  - (i) the nature of that information, and
  - (ii) the main purposes for which the information is used, and
  - (iii) that person's entitlement to gain access to the information.

The Privacy Code of Practice for Local Government	Council Policy
<p>The Code makes no provision to depart from this principle.</p>	<p>Section 13 of the PPIPA requires a council to take reasonable steps to enable a person to determine whether the council holds personal information about them. If Council holds any information about a person, upon request it will advise them the nature of that information, the main purposes for which it is held, and that person's entitlement to access. As a matter of practicality, not every item of personal information, however insignificant, will be capable of ascertainment.</p> <p>Under section 20(5) of the PPIPA, Information Protection Principle 6 is subject to any applicable conditions or limitations contained in the Government Information (Public Access) Act 2009 ("GIPA Act"). Council must consider the relevant provisions of the GIPA Act.</p> <p>Where Council receives an application or request by a person as to whether council holds information about them, Council will undertake a search of its records to answer the enquiry. Council may ask the applicant to describe what dealings the applicant has had with council in order to assist Council to conduct the search.</p> <p>Council will ordinarily provide a response to applications of this kind within 20 working days of the application being made. The fee structure is commensurate to that of the Council's GIPA Act rates structure.</p>

#### Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 6.

#### Existing exemptions under the Act

Compliance with Information Protection Principle 6 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 6 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 6 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

#### Reporting matters

Council's Agency Information Guide (AIG) provides details on the type of information that is collected by Council. The AIG is available from Council's [website](#).

#### Further information

Further details concerning how to apply to Council for this information can be addressed in writing to:

The Privacy Officer  
PO BOX 42  
Raymond Terrace NSW 2324

Or by email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

**3.7 Information Protection Principle 7 - Access to personal information held by agencies****Section 14 Access to personal information held by agencies**

A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.

The Privacy Code of Practice for Local Government	Council Policy
<p>The Code makes no provision to depart from this principle.</p>	<p>Section 14 of the PPIPA requires a council, at the request of any person, to give access to that person to personal information held about them.</p> <p>Compliance with Information Protection Principle 7 does not allow disclosure of information about other people. If access to information that relates to someone else is sought, the application must be made under the GIPA Act, unless Information Protection Principles 11 and 12 or the Public Register provisions apply.</p> <p>Where a person makes an application for access under the PPIPA and it is involved or complex, it may be referred, with the written consent of the applicant, as an application under the GIPA Act. However, use of the GIPA Act is to be a last resort. The applicant has the right to insist on being dealt with under PPIPA.</p> <p>Under section 20(5) of the PPIPA, Information Protection Principle 7 is subject to any applicable conditions or limitations contained in the Government Information (Public Access) Act 2009 ("GIPA Act"). Council must consider the relevant provisions of the GIPA Act.</p> <p>Customers wishing to exercise their right of access to their own personal information should apply in writing or direct their enquiries to the General Manager, who will make a determination. This can also be undertaken under the GIPA Act through an informal request.</p> <p>Members of staff wishing to exercise their right of access to their personal information should apply in writing on the attached form or direct their inquiries to the HR Manager, who will deal with the application.</p> <p>In order to comply with the requirement to provide the requested information "without excessive delay or expense", Council will ordinarily provide a response to applications of this kind within 20 working days of the application being made.</p>

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 7.

Existing exemptions under the Act

Compliance with Information Protection Principle 7 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 7 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA non-compliance with Information Protection Principle 7 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.



### 3.8 Information Protection Principle 8 - Alteration of personal information

#### Section 15 Alteration of personal information

- (1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:
  - (a) is accurate, and
  - (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.
- (2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.
- (3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.
- (4) This section, and any provision of privacy code of practice that relates to the requirements set out in this section, apply to public sector agencies despite section 25 of this Act and section 21 of the State Records Act 1998.
- (5) The Privacy Commissioner's guidelines under section 36 may make provision for or with respect to requests under this section, including the way in which such a request should be made and the time within which such a request should be dealt with.
- (6) In this section (and in any other provision of this Act in connection with the operation of this section), **public sector agency** includes a Minister and a Minister's personal staff.

The Privacy Code of Practice for Local Government	Council Policy
The Code makes no provision to depart from this principle.	<p>Section 15 of the PPIPA allows a person to make an application to council to amend (this includes by way of corrections, deletions or additions) personal information held about them so as to ensure the information is accurate, and, having regard to the purpose for which the information is collected, relevant to that purpose, up to date and not misleading.</p> <p>Council wishes to have its information current, accurate and complete. Proposed amendments or changes to the personal information held by the Council are welcomed.</p> <p>If Council declines to amend personal information as</p>

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

	<p>requested, it will on request of the individual concerned, place an addendum on the information in accordance with section 15(2) of the PPIPA.</p> <p>Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the HR Manager in the first instance and treated in accordance with the "Grievance and Complaint Handling Procedures".</p> <p>Any alterations that are or could be the subject of a customer complaint or grievance will be referred to the General Manager, who will make a determination in relation to the matter.</p>
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Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 8.

Existing exemptions under the Act

Compliance with Information Protection Principle 8 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 8 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with section Information Protection Principle 8 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

Procedure

Where information is requested to be amended (either by way of correction, deletion or addition), the individual to whom the information relates, must make a request, in writing to Council's Privacy Officer. That request should be accompanied by appropriate evidence as to the cogency of the making of the amendment, sufficient to satisfy the Council that the proposed amendment is factually correct and appropriate. The Council may require further documentary evidence to support certain amendments. Council will not charge to process an application to amend a record under s.15.

Where Council is not prepared to amend

If the Council is not prepared to amend the personal information in accordance with a request by the individual the Council may attach to the information in such a manner

as is capable of being read with the information, any statement provided by that individual.

Where an amendment is made

If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have the recipients of that information notified of the amendments made by the Council. The Council will seek to notify recipients of information as soon as possible, of the making of any amendment, where it is reasonably practicable.

State Records Act

The State Records Act does not allow for the deletion of records. However, as a result of section 20(4) of the PPIPA, some deletions may be allowed in accordance with Information Protection Principle 8.

How to apply

If an alteration is requested, Council would require this request to be made in writing and addressed to:

The Privacy Officer  
PO BOX 42  
Raymond Terrace NSW 2324

Or by email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

### 3.9 Information Protection Principle 9 - Agency must check accuracy of personal information before use

#### Section 16 Agency must check accuracy of personal information before use

A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.

The Privacy Code of Practice for Local Government	Council Policy
The Code makes no provision to depart from this principle.	<p>The steps taken to comply with section 16 will depend on the age of the information, its likelihood of change and the particular function for which the information was collected.</p> <p>The more significant the information, the greater the necessity that checks to ensure its accuracy and currency be undertaken prior to its use. This however does not detract from the obligation on Council to take such steps as are reasonable to ensure that any personal information being used is accurate before using it.</p> <p>For example, each employee's record should be updated when there is any change of circumstances or when the employee's contact details change.</p>

### 3.10 Information Protection Principle 10 - Limits on use of personal information

#### Section 17 Limits on use of personal information

A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:

- (a) the individual to whom the information relates has consented to the use of the information for that other purpose, or
- (b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
- (c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.

The Privacy Code of Practice for Local Government	Council Policy
<p>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:</p> <ul style="list-style-type: none"> <li>(i) where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s; or</li> <li>(ii) where personal information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of personal recognition.</li> </ul>	<p>Council will seek to ensure that information collected for one purpose will be used for that same purpose. Where Council may need to use personal information collected for one purpose for another purpose, it will first gain the consent of the individual concerned, unless an exemption applies.</p>

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

Explanatory Note

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

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

External and related bodies

Each of the following will be required to comply with the Information Protection Principle 10:

- Council employees
- Council owned businesses
- Council consultants;
- Private contractors; and
- Council committees.

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

Where any of the above seek to use personal information collected for one purpose, that body or person will be required to obtain the written consent of those persons in accordance with section 17(a) to the use of the information for another purpose.

The form of consent should include the following elements:

I, <sup>(1)</sup> .....	(1) insert full name
of <sup>(2)</sup> .....	(2) insert address
hereby consent under section 17(a) of the Privacy and Personal Information Protection Act 1998 to <sup>(3)</sup> : .....	(3) insert Council name
using the information collected from me by <sup>(4)</sup> : .....	(4) insert name of collecting body/person
for the purpose of <sup>(5)</sup> : .....	(5) insert purpose/s info was collected for
Signature .....	
Name to be printed .....	
Date signed .....	

### Investigative Functions

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

### Existing exemptions under the Act

Compliance with Information Protection Principle 10 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(4) of the PPIPA permits Council not to comply with Information Protection Principle 10 where the use of the information for another purpose is reasonably necessary for law enforcement purposes or for the protection of the public revenue. Law enforcement purposes means a breach of the criminal law and criminal law enforcement. This section does not remove the rights of an accused person. Protection of the public revenue means a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty.

Section 24(4) of the PPIPA extends the operation of section 24(2) to councils and permits non-compliance with Information Protection Principle 10 if a council is:

- (i) investigating or otherwise handling a complaint or other matter that could be referred or made to, or has been referred from or made by, an investigative agency; and
- (ii) the use of the information concerned for a purpose other than the purpose for which it was collected is reasonably necessary in order to enable the council to exercise its complaint handling functions or any of its investigative functions.

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 10 where Council is lawfully authorised or required not to comply with the principle.

Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 10 where non-compliance is "necessarily implied" or "reasonably contemplated" under any Act or law.

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

### 3.11 Information Protection Principle 11 - Limits on disclosure of personal information

#### Section 18 Limits on disclosure of personal information

- (1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:
  - (a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or
  - (b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or
  - (c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.
- (2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

The Privacy Code of Practice for Local Government	Council Policy
<p>The Code makes provision for council to depart from this principle in the circumstances described below:</p> <ol style="list-style-type: none"> <li>1. Council may disclose personal information to public sector agencies or public utilities on condition that:           <ol style="list-style-type: none"> <li>(i) the agency or utility provider has approached Council in writing;</li> <li>(ii) Council is satisfied that the information is to be used by that agency for the proper and lawful function/s of that agency or utility provider, and</li> </ol> </li> </ol>	<p>Council will not disclose the information to another person or other body, unless the disclosure is directly related to the purpose for which the information was collected or where the Council has no reason to believe that the individual concerned would object to the disclosure.</p> <p>Council may disclose personal information to another person or other body where this disclosure is directly related to the purpose for which the personal information was collected and the individual concerned is reasonably likely to have been aware, (or has been made aware in accordance with section 10), of the intended recipients of that information. "Directly related" can mean the disclosure to another person or agency to deliver a service which supplements that of Council or disclosure to a consultant for the purpose of assessing or reviewing the delivery of a program to which the original collection relates.</p> <p>The Council may disclose personal information to another person or other body where this disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or</p>



(iii) Council is satisfied that the personal information is reasonably necessary for the exercise of that agency or utility provider's function/s.	another person.
2. Where personal information which has been collected about an individual is to be disclosed for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition.	
3. Where Council is requested by a potential employer, it may verify that a current or former employee works or has worked for Council, the duration of that work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.	

### Public Registers

Sections 18 and 57 of the PPIPA should be read in conjunction in regard to Public Registers. Public Registers are discussed further in Part 2 of this Plan.

### Investigative Functions

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

### Existing exemptions under the Act

Compliance with Information Protection Principle 11 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

Section 23(5)(a) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is made to a law enforcement agency in connection with proceedings for an offence or for law enforcement purposes. *Law enforcement purposes* means a breach of the criminal law and criminal law enforcement. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(b) of the PPIPA permits non-compliance with Information Protection Principle 11 where the disclosure is made to a law enforcement agency for the purpose of ascertaining the whereabouts of a person reported to be missing. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(c) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is authorised by subpoena, search warrant or other statutory instrument. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(d)(i) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary for the protection of the public revenue. *Protection of the public revenue* could mean a fraud with respect to taxes or other revenue earning processes such as avoidance of stamp duty. However Council need not disclose material that it is entitled to refuse in the absence of a subpoena, warrant or other lawful requirement.

Section 23(5)(d)(ii) of the PPIPA permits non-compliance with Information Protection Principle 11 where disclosure is reasonably necessary to investigate an offence where there are reasonable grounds to believe an offence has been committed.

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

Section 24(4) of the PPIPA permits non-compliance with Information Protection Principle 11 if:

- (i) investigating a complaint that could be referred or made to, or has been referred from or made by, an investigative agency, and
- (ii) if the disclosure is to an investigative agency.

(Note: “investigative agency” is defined at s.3 of PPIPA.)

Section 25(a) of the PPIPA permits non-compliance with Information Protection Principle 11 where Council is lawfully authorised or required not to comply with the principle. Section 25(b) of the PPIPA permits non-compliance with Information Protection Principle 11 where non-compliance is “necessarily implied” or “reasonably contemplated” under any Act or law.

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

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

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

#### Suppression

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

### 3.12 Information Protection Principle 12 - Special restrictions on disclosure of personal information

#### Section 19 Special restrictions on disclosure of personal information

- (1) A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.
- (2) A public sector agency that holds personal information must not disclose the information to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:
  - (a) a relevant privacy law that applies to the personal information concerned is in force in the that jurisdiction or applies to that Commonwealth agency, or
  - (b) the disclosure is permitted under a privacy code of practice.
- (3) For the purposes of subsection (2), a **relevant privacy law** means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.
- (4) The Privacy Commissioner is to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales and to Commonwealth agencies.
- (5) Subsection (2) does not apply:
  - (a) until after the first anniversary of the commencement of this section, or
  - (b) until a code referred to in subsection (4) is made, whichever is the later.

The Privacy Code of Practice for Local Government	Council Policy
<p>The Code makes provision for Council to depart from this principle in the circumstances described below:</p> <ol style="list-style-type: none"> <li>1. For the purposes of s.19(2) only, where Council is requested by a potential employer outside New South Wales, it may verify that a current or former employee works or has worked for Council, the duration of that</li> </ol>	<p>Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.</p>

<p>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.</p>	
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#### Public Registers

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

#### Investigative Functions

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

#### Existing exemptions under the Act

Compliance with Information Protection Principle 12 is also subject to certain exemptions under the Act. If one of those exemptions apply, Council need not comply. The statutory exemption will be relied upon only in limited circumstances and legal advice should normally be obtained.

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

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

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

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

Section 28(2) permits non-compliance with Information Protection Principle 12 where, in the case of health information, the consent of the person cannot reasonably be obtained and the disclosure is made by an authorised person to another authorised person. “Authorised person” means a medical practitioner, health worker, or other official or employee providing health or community services who is employed or engaged by a public sector agency.

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

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

#### Suppression

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

### **PART 4 – HEALTH PRIVACY PRINCIPLES**

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

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

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

Health information is defined in section 6 of the HRIPA. Local councils will often hold health information by reason of their role in elder care, child care and various types of community health support services. It is therefore very important for councils to be familiar with the 15 Health Protection Principles ("HPP") set down in Schedule 1 to the HRIPA. Each of these HPPs are considered below.

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

- Tree pruning/removal application where residents approach council for a reconsideration or reassessment of a tree pruning/removal application on medical grounds;
- Issuing of clean up orders which may include recording information about a residents health, GP professional contact details or involvement with mental health services;
- Volunteer programs where volunteers are asked to disclose health conditions which may preclude them from some types of volunteer work;
- Meals on wheels programs where residents may be asked for medical or dietary requirements, e.g. allergies for catering purposes;
- Seniors bus outings where information may be collected on special medical needs;
- Councils may provide respite and social support services collecting information that is consistent with the client intake and referral record system;
- Information on families for the purposes of children's services. e.g. history of illness, allergies, asthma, diabetes, epilepsy etc;
- Physical exercise classes;

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

- Some councils run Podiatry services;
- Information may be collected through a healthy community program;
- Children's immunization records; and
- Family counsellor/youth support workers records.

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

**Health Privacy Principle 1****Purposes of collection of health information**

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

**Health Privacy Principle 2****Information must be relevant, not excessive, accurate and not intrusive**

An organisation that collects health information from an individual must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

- (a) the information is collected is relevant to that purpose, is not excessive and is accurate, up to date and complete, and
- (b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

Council complies with this Health Privacy Principle by collecting only the information that is deemed to be necessary to carry out the function to which the collection relates. This is implemented by control measures such as directed questions on forms to ensure the required extent of disclosure is obtained.

Prior to using personal information, Council may take reasonable steps to check its accuracy by taking the following into consideration:

- What was the purpose for which the information was collected?
- When was it collected?
- What was the contact in which the information was collected?
- What purpose is the information going to be used for?
- Who has access to this information? In addition to this, who has access to edit it?



- How important is the accuracy of this information?
- What is the possible impact on the individual if the information is inaccurate, out of date or irrelevant?
- Is it possible to correct inaccuracies prior to use?
- What are the barriers to checking the information? I.e. cost or resources

**Health Privacy Principle 3****Collection to be from the individual concerned**

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

Some examples of when health information is collected may include:

- When an incident concerning public liability has occurred and an injury has been alleged or sustained. In order to advise Council's insurers of the incident and potential or impending claim, Council may require the provision of health information to demonstrate the extent of injury.
- Workers compensation claims
- Accessing leave entitlements including sick leave
- Mandatory testing including for recruitment purposes

**Health Privacy Principle 4****Individual to be made aware of certain matters**

- (1) An organisation that collects health information about an individual from the individual must, at or before the time it collects the information (or if that is not practicable, as soon as practicable after that time), take steps that are reasonable in the circumstances to ensure that the individual is aware of the following:
  - (a) the identity of the organisation and how to contact it,
  - (b) the fact that the individual is able to request access to the information,
  - (c) the purposes for which the information is collected,
  - (d) the persons to whom (or the type of persons to whom) the organisation usually discloses information of that kind,
  - (e) any law that requires the particular information to be collected,
  - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- (2) If the organisation collects health information about an individual from someone else, it must take any steps that are reasonable in the circumstances to ensure that the individual is generally aware of the matters listed in subclause (1) except to the extent that:
  - (a) making the individual aware of the matters would impose a serious threat to the life or health of any individual, or
  - (b) the collection is made in accordance with guidelines issued under subclause (3).
- (3) The Privacy Commissioner may issue guidelines setting out circumstances in which an organisation is not required to comply with subclause (2).
- (4) An organisation is not required to comply with a requirement of this clause if:
  - (a) the individual to whom the information relates has expressly consented to the organisation not complying with it or,
  - (b) the organisation is lawfully authorised or required not to comply with it, or
  - (c) non-compliance is otherwise permitted (or necessarily implied or reasonably contemplated) under any Act or any other law including the State Records Act 1998), or
  - (d) compliance by the organisation would, in the circumstances, prejudice the interests of the individual to whom the information relates, or
  - (e) the information concerned is collected for law enforcement purposes or,
  - (f) the organisation is an investigative agency and compliance might detrimentally affect (or prevent the proper exercise of) its complaint handling functions or any of its investigative functions.
- (5) If the organisation reasonably believes that the individual is incapable of understanding the general nature of the matters listed in subclause (1), the organisation must take steps that are reasonable in the circumstances, to ensure that any authorised representative of the individual is aware of those matters.

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

- (6) Subclause (4) (e) does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence.
- (7) The exemption provided by subclause (4) (f) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a compliant or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.

**Council Policy**

Council will only collect health information for a lawful purpose that is directly related to Council's activities and is necessary for that purpose (HPP 1)

Council will ensure that the health information is relevant, accurate, up to date and not excessive and that the collection is not unnecessarily intrusive into the personal affairs of the individual (HPP 2).

Council will only collect health information directly from the individual that the information concerns, unless it is unreasonable or impractical for Council to do so. (HPP 3).

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

If Council collects health information about a person from someone else, Council will take reasonable steps to ensure that the subject of the information is aware of the above points (HPP 4).

Council complies with this HPP by collecting only the information that is deemed to be necessary to carry out the function to which the collection relates. This is implemented by control measures such as directed questions on forms to ensure the required extent of disclosure is obtained.

When health information is collected, notification of the collection can be found on the relevant form requesting the information. When health information is not provided via written mechanisms the third party is advised of this collection verbally.

**Health Privacy Principle 5****Retention and Security**

- (1) An organisation that holds health information must ensure that:
  - (a) the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
  - (b) the information is disposed of securely and in accordance with any requirements for the retention and disposal of health information, and

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

- (c) the information is protected, by taking such security safeguards as are reasonable in the circumstances against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
- (d) if it is necessary for the information to be given to a person in connection with the provision of a service to the organisation, everything reasonably within the power of an organisation is done to prevent the unauthorised use or disclosure of the information.

**Note.** Division 2 (Retention of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.

- (2) An organisation is not required to comply with a requirement of this clause if:
  - (a) the organisation is lawfully authorised or required not to comply with it, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).
- (3) An investigative agency is not required to comply with subclause (1)(a).

#### Council Policy

Council will store health information securely and protect health information from unauthorised access, use or disclosure. Health information will not be kept for any longer than is necessary and will be disposed of appropriately (HPP 5). Council may comply with this principle (HPP 5) by using any or all of the following or similar documents:

- Council's ICT Systems Access and Cyber Security and Information Access Management Directive. This document defines the minimum requirements for controlling access to Council's systems and information to ensure appropriate access to systems can be provided whilst adequate protection from exposure to cyber threats is provided.
- Council's Records Management Management Directive
- General Records Disposal Schedule for Local Government.

#### Health Privacy Principle 6

##### *Information about health information held by organisations*

- (1) An organisation that holds health information must take such steps as are, in the circumstances, reasonable, to enable any individual to ascertain:
  - (a) whether the organisation holds health information, and
  - (b) whether the organisation holds health information relating to that individual, and
  - (c) if the organisation holds health information relating to that individual:
    - (i) the nature of that information
    - (ii) the main purposes for which the information is used, and
    - (iii) that person's entitlement to request access to the information.
- (2) An organisation is not required to comply with a provision of this clause if:

**ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.**

- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
- (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under any Act or any other law (including the State Records Act 1998).

**Health Privacy Principle 7****Access to health information**

- (1) An organisation that holds health information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.
- (2) Such requests can be made in writing and forwarded to:  
The Privacy Officer  
PO BOX 42  
Raymond Terrace NSW 2324  
Or by email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

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

- (3) An organisation is not required to comply with a provision of this clause if:
  - (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

**Health Privacy Principle 8****Amendment of health information**

- (1) An organisation that holds health information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the health information:
  - (a) is accurate, and
  - (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to day, complete and not misleading.
- (2) Such requests can be made in writing and forwarded to:  
The Privacy Officer  
PO BOX 42  
Raymond Terrace NSW 2324  
Or by email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)
- (3) If an organisation is not prepared to amend health information under subclause (1) in accordance with a request by the individual to whom the information relates, the organisation must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

individual of the amendment sought.

- (4) If health information is amended in accordance with this clause, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the organisation.

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

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

- (5) An organisation is not required to comply with a provision of this clause if:
- (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).

### **Health Privacy Principle 9**

#### **Accuracy**

An organisation that holds health information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate and up to date, complete and not misleading.

#### **Council Policy**

Council will provide details about what health information Council is holding about an individual and with information about why Council is storing that information and what rights of access the individual has (HPP 6).

Council will allow the individual to access his or her health information without reasonable delay or expense. A request to access information can be made in writing to Council (HPP 7).

Council will allow the individual to update, correct or amend his or her health information where necessary. A request to amend information can be made in writing to Council (HPP 8).

Council will make sure that the health information is relevant and accurate before using it, from the information available to Council to assess the accuracy (HPP 9).

Prior to using personal information, Council may take reasonable steps to check its accuracy by taking the following into consideration:

- What as the purpose for which the information was collected?

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

- When was it collected?
- What was the context in which this information was collected?
- What purpose is the information going to be used for?
- Who has access to this information? And who has access to edit this information?
- How important is the accuracy of this information?
- What is the impact on the individual if the information is inaccurate, out of date or irrelevant?
- Is it possible to correct inaccuracies prior to use?
- What are the barriers to checking the information?

**Health Privacy Principle 10**

- (1) An organisation that holds health information must not use the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:
- (a) **Consent**  
the individual to whom the information relates has consented to the use of the information for that secondary purpose, or
- (b) **Direct relation**  
the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to use the information for the secondary purpose or,  
**Note:** For example, if information is collected in order to provide a health service to the individual, the use of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.
- (c) **Serious threat to health or welfare**  
the use of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:
- (i) a serious and imminent threat to the life, health or safety of the individual or another person, or
- (ii) a serious threat to public health and safety, or
- (d) **Management of health services**  
the use of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:
- (i) either:
- (A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or
- (B) reasonable steps are taken to de-identify the information, and
- (ii) if the information is in a form that could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
- (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or



## ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.

- (e) **Training**  
the use of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:
  - (i) either:
    - (A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or
    - (B) reasonable steps are taken to de-identify the information, and
  - (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
  - (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or
- (f) **Research**  
the use of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:
  - (i) either:
    - (A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or
    - (B) reasonable steps are taken to de-identify the information, and
  - (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
  - (iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purpose of this paragraph, or
- (g) **Find missing person**  
the use of the information for the secondary purpose is by a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or
- (h) **Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline**  
the organisation:
  - (i) has reasonable grounds to suspect that:
    - (A) unlawful activity has been or may be engaged in, or
    - (B) a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a the Health Practitioner Regulation National Law (NSW), or
  - (C) an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and
  - (ii) uses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or
- (i) **Law enforcement**  
the use of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

- (j) **Investigative agencies**  
the use of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or
- (k) **Prescribed circumstances**  
the use of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.
- (2) An organisation is not required to comply with a provision of this clause if:
  - (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).
- (3) The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.
- (4) Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:
  - (a) to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or
  - (b) to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.
- (5) The exemption provided by subclause (1) (j) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.

**Council Policy**

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

Council takes reasonable steps to ensure that personal and health information is only accessible by the staff who require access to it in order to carry out their functions. Information collected by Council may be used by departments and units of Council that did not undertake the initial collection of the information only if the use of it is for the same purpose in which it was originally collected.

For example, if Council held information concerning a health condition relating to a member of staff and an incident occurred which caused threat to the health of the employee, the information may be relayed to an emergency services officer attending the scene. This would be only be permissible as the secondary purpose is directly

related to the primary purpose the information was collected.

#### **Health Privacy Principle 11**

- (1) An organisation that holds health information must not disclose the information for a purpose (a **secondary purpose**) other than the purpose (the **primary purpose**) for which it was collected unless:
  - (a) **Consent**  
the individual to whom the information relates has consented to the disclosure of the information for that secondary purpose, or
  - (b) **Direct relation**  
the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to disclose the information for the secondary purpose, or  
  
Note: For example, if information is collected in order to provide a health service to the individual, the disclosure of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.
  - (c) **Serious threat to health or welfare**  
the disclosure of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:
    - (i) a serious and imminent threat to the life, health or safety of the individual or another person, or
    - (ii) a serious threat to public health or public safety, or
  - (d) **Management of health services**  
the disclosure of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:
    - (i) either:
      - (A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or
      - (B) reasonable steps are taken to de-identify the information, and
    - (ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and
    - (iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or
  - (e) **Training**

## ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.

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

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

(f) **Research**

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

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

(g) **Compassionate reasons**

the disclosure of the information for the secondary purpose is to provide the information to an immediate family member of the individual for compassionate reasons and:

- (i) the disclosure is limited to the extent reasonable for those compassionate reasons, and
- (ii) the individual is incapable of giving consent to the disclosure of the information, and
- (iii) the disclosure is not contrary to any wish expressed by the individual (and not withdrawn) of which the organisation was aware or could make itself aware by taking reasonable steps, and

## ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.

- (iv) if the immediate family member is under the age of 18 years, the organisation reasonably believes that the family member has sufficient maturity in the circumstances to receive the information, or

- (h) **Finding missing person**

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

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

the organisation:

- (i) has reasonable grounds to suspect that:
  - (A) unlawful activity has been or may be engaged in, or
  - (B) a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a the Health Practitioner Regulation National Law (NSW), or
  - (C) an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and
- (ii) discloses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or
- (j) **Law enforcement**

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

- (k) **Investigative agencies**

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

- (l) **Prescribed circumstances**

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

- (2) An organisation is not required to comply with a provision of this clause if:
  - (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998 ), or
  - (c) the organisation is an investigative agency disclosing information to another investigative agency.

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

- (3) The Ombudsman's Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions.
- (4) Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:
  - (a) to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or
  - (b) to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.
- (5) If health information is disclosed in accordance with subclause (1), the person, body or organisation to whom it was disclosed must not use or disclose the information for a purpose other than the purpose for which the information was given to it.
- (6) The exemptions provided by subclauses (1) (k) and (2) extend to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.

**Council Policy**

Council will only disclose health information under the following circumstances:

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

**Health Privacy Principle 12****Identifiers**

- (1) An organisation may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently.
- (2) Subject to subclause (4), a private sector person may only adopt as its own identifier of an individual an identifier of an individual that has been assigned by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:
  - (a) the individual has consented to the adoption of the same identifier, or
  - (b) the use or disclosure of the identifier is required or authorised by or under law.
- (3) Subject to subclause (4), a private sector person may only use or disclose an identifier assigned to an individual by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

- (a) the use or disclosure is required for the purpose for which it was assigned or for a secondary purpose referred to in one or more paragraphs of HPP 10 (1) (c)-(k) or 11 (1) (c)-(l), or
- (b) the individual has consented to the use or disclosure, or
- (c) the disclosure is to the public sector agency that assigned the identifier to enable the public sector agency to identify the individual for its own purposes.
- (4) If the use or disclosure of an identifier assigned to an individual by a public sector agency is necessary for a private sector person to fulfil its obligations to, or the requirements of, the public sector agency, a private sector person may either:
  - (a) adopt as its own identifier of an individual an identifier of the individual that has been assigned by the public sector agency, or
  - (b) use or disclose an identifier of the individual that has been assigned by the public sector agency.

**Council Policy**

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

**Health Privacy Principle 13****Anonymity**

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

**Council Policy**

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

An example of when an individual may request to remain anonymous may be when they are lodging a complaint about a companion animal, submissions on a development application or notification to Council of a pothole requiring repair.

An individual can request to remain anonymous verbally or in writing, depending upon how the communication is received (via email or over the phone). If an individual does elect to remain anonymous, future contact regarding the matter may not be possible or they may not be able to be updated on the outcome of the matter.

**Health Privacy Principle 14****Transborder data flows and data flow to Commonwealth agencies.**

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

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

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

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

In addition to the normal disclosure rules, Council will not disclose (or transfer) personal or health information to any person or body outside NSW or to a Commonwealth agency (transborder disclosure) unless one of the following exemptions apply:

- the other party is subject to a law, scheme or contract that upholds principles substantially similar to the information privacy principles
- the individual concerned has consented
- the transfer is necessary for the performance of a contract between the individual and Council or a third party • the transfer will benefit the individual concerned, but it is impracticable to obtain their consent, and if notified would likely consent
- the disclosure is reasonably believed by 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
- Council has taken reasonable steps to ensure the information won't be dealt with inconsistently with the information privacy principles (e.g. we have bound the recipient by contract to privacy obligations equivalent to the principles), or
- if it is permitted by any other exemption in the Privacy legislation, permitted or required by any Act or any other law Where information is disclosed transborder,



## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

Council will make an assessment to determine that the privacy protections operating in the destination jurisdiction are substantially similar to those in NSW and put in place contractual terms to ensure the protection of the information provided.

Where it is necessary for personal or health information to be disclosed to a third party provider, for the purposes of providing a service, Council ensures that appropriate contractual protections are included in the contract with the provider to prevent unauthorised use or disclosure of personal or health information. Contracts with third party providers include appropriate standards for data protection and require compliance with the relevant privacy principles. Where Council intends to disclose personal or health information to a third party service provider outside of NSW or to a Commonwealth agency, Council takes reasonable steps to ensure that the information it has disclosed will not be held, used or disclosed by the recipient inconsistently with the IPPs / HPPs. This is achieved by

- including contractual protections requiring the recipient to comply with the IPPs / HPPs and the Privacy Commissioner's guidance on transborder disclosures;
- making an assessment to determine that the privacy protections operating in the destination jurisdiction are substantially similar to those in NSW; and
- conducting audits over the service providers' IT systems before the contract is entered into and during the term of the contract.

#### Council Policy

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

#### Health Privacy Principle 15

##### Linkage of health records

- (1) An organisation must not:
  - (a) include health information about an individual in a health records linkage system unless the individual has expressly consented to the information being so included, or
  - (b) disclose an identifier of an individual to any person if the purpose of the disclosure is to include health information about the individual in a health records linkage system, unless the individual has expressly consented to the identifier being disclosed for that purpose.
- (2) An organisation is not required to comply with a provision of this clause if:
  - (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or
  - (b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998 ), or
  - (c) the inclusion of the health information about the individual in the health records information system (including an inclusion for which an identifier of the individual is to be disclosed) is a use of the information that complies with HPP 10 (1) (f) or a disclosure of the information that complies with HPP 11 (1) (f).
- (3) In this clause:

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

**health records linkage system** means a computerised system that is designed to link health records for an individual held by different organisations for the purpose of facilitating access to health records, and includes a system or class of systems prescribed by the regulations as being a health records linkage system, but does not include a system or class of systems prescribed by the regulations as not being a health records linkage system.

As of the date of this Plans endorsement, Council does not maintain a health records linkage system.

**Council Policy**

Council will only include health information in a system to link health records across more than one organisation if the individual to whom the health information relates expressly consents to the link (HPP 15).

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

### **5.1 Training Seminars/Induction**

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

Councillors, all staff of the Council including staff of council businesses, and members of council committees should be acquainted with the general provisions of the PPIPA, the HRIPA and in particular, the 12 Information Protection Principles (IPPs), the 15 Health Privacy Principles (HPPs), the Public Register provisions, the Privacy Code of Practice for Local Government, this Plan and any other applicable Code of Practice.

All new employees are required to complete on line privacy training as part of their probation period and also attend privacy training at the induction. Ongoing privacy training is provided to those employees who are responsible for handling personal information.

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

The Privacy Officer within Council is responsible for the role of the Privacy Contact Officer.

In order to ensure compliance with PPIPA and the HRIPA, the Privacy Contact Officer or Council's legal services area will review all contracts and agreements with consultants and other contractors, rates notices, application forms of whatsoever nature, and other written requests by which personal information is collected by Council, to ensure that Council is in compliance with the PPIPA.

The Privacy Contact Officer will ensure Council in its public areas has special provisions for working with computer screens. Computer screens may require:

- fast screen savers;
- face the computers away from the public; or
- only allow the record system to show one record at a time.

Council's electronic databases should also be reviewed to ensure that they contain procedures and protocols to check the accuracy and currency of personal and health information.

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

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

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

Should the Council require, the Privacy Contact Officer may assign designated officers as "Privacy Resource Officers", within the larger departments of Council. In this manner the Council may ensure that the information protection principles are more broadly understood and that individual departments have a greater focus on the information protection principles and are directly applied to Council's day to day functions.

### **5.3    Distribution of information to the public**

Council may prepare its own literature such as pamphlets on the PPIPA, HRIPA or it may obtain and distribute copies of literature available from the Information and Privacy Commission NSW.

## **PART 6 – DATA BREACHES**

### **6.1 What is a data breach?**

The Mandatory Notification of Data Breach Scheme ('MNDB Scheme') is a mandatory notification requirement under the *Privacy and Personal Information Protection Act 1998* for NSW public sector agencies in the event of an 'eligible data breach'. An 'eligible data breach' occurs when there is:

- unauthorised access to, or unauthorised disclosure of, personal information held by an agency that would be likely to result in serious harm to an individual to whom the information relates
- the loss of personal information held by an agency in circumstances where unauthorised access or disclosure is likely to occur and which would be likely to result in serious harm to an individual to whom the information relates.

### **6.2 What is unauthorised access and unauthorised disclosure?**

Unauthorised access to personal information can occur when someone accesses information without permission. For example:

- a cyber attack on a database containing personal information, or
- an agency employee intentionally opens an electronic or paper file containing personal information when they do not have permission to access that information.

Unauthorised disclosure of personal information can occur if information is provided to or accessible by people outside the agency. This could be the result of:

- simple human or technical errors without malicious intent, for example where an agency accidentally publishes a data set containing personal information on its website
- a third party downloading data from an unsecured computer system or platform
- emails containing personal information being sent to the wrong person.

Personal information held by an agency can also be accidentally lost (including where it is stolen) in circumstances where it is likely to result in unauthorised access to or disclosure of that information. For example:

- a file containing personal information is accidentally left in a public place
- a laptop containing the personal information of an agency's clients is stolen from the agency's office.

**6.3 What are the potential impacts of a data breach?**

- Financial loss through fraud
- A likely risk of physical or psychological harm, such as by an abusive ex-partner
- Identity theft, which can affect your finances and/or credit record
- Serious harm to an individual's or Council's reputation.

**6.4 Who decides if you've suffered serious harm?**

Whether the unauthorised access, disclosure or loss of your personal information is likely to result in serious harm to you, will be assessed by the agency as part of its response to the data breach. This requires an objective assessment determined from the viewpoint of a reasonable person.

An agency will consider the circumstances of the breach, how likely it is that the breach will cause harm, and the consequences and severity of that harm. In making this determination, the agency may consider the following:

- the types of personal information involved, for example, an email address is likely to be considered less likely to result in serious harm than credit card details
- the sensitivity of the personal information, for example, if it relates to a person's finances, health, or sexual orientation
- whether the personal information is or was protected by security measures such as encryption and therefore unlikely to be accessed or misused
- who has access to the personal information
- whether the person/s who accessed the personal information may have a malicious intent and whether they may be able to circumvent security measures
- the nature of the likely harm
- any other matter specified in the Privacy Commissioner's guidelines.

**6.5 Your right to be notified of a breach of your personal information**

When a data breach occurs, Council must immediately make all reasonable efforts to contain the breach and try to reduce the likelihood that an individual will experience serious harm.

Council then has 30 days from the date they become aware of a possible data breach to assess whether that data breach is likely to result in serious harm. Whilst making this assessment, all reasonable attempts must be made to mitigate any harm already done.

If an agency decides there has been an eligible data breach in relation to your personal information, it must notify you as soon as practicable about that breach. This means that an agency must notify you in writing and provide you with information about the eligible data breach, including:

- actions the agency has taken or plans to take to control or mitigate the harm done to you
- steps you should consider taking following an eligible data breach
- information about how to seek an internal review of the agency's conduct or make a privacy complaint to the Privacy Commissioner.

If the agency is unable to notify you directly it must publish a notification on its website and take reasonable steps to publicise the notification. The notification must remain on the agency's public notification register for at least 12 months. There are certain exemptions to the requirement that agencies notify affected individuals of a data breach. For example, if an agency acts quickly to mitigate a data breach, and because of this action the data breach is not likely to result in serious harm, there is no requirement to notify any affected individuals.

#### **6.6 What do I do if I become aware of a suspected data breach?**

If you suspect a data breach has occurred, you must immediately submit an incident form via our website. You may alternatively call Council and ask to speak with a member from our Governance team.

#### **6.7 Where can I go to get more information about the scheme and how Port Stephens Council manage it?**

- The Information and Privacy Commission publishes helpful information which can be found here: <https://www.ipc.nsw.gov.au/privacy/MNDB-scheme>
- Council's Data Breach page on our website
- Council's Agency Information Guide
- Council's Data Breach [Policy](#).

## **PART 7 – INTERNAL REVIEW**

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

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

The application is to be in writing and addressed to Council's Privacy Contact Officer. The Privacy Contact Officer will appoint a Reviewing Officer to conduct the internal review. The Reviewing Officer must not be substantially involved in any matter relating to the application. The Reviewing Officer must be an employee and suitability qualified.

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

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

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

Council must notify the applicant of the outcome of the review within **14 days** of its determination. A copy of the final review should also be provided to the Privacy Commissioner where it departs from the draft review. Council will provide written notice as to the review rights of the applicant if the internal review is not completed within 60 days from lodgement.

An application form requesting an internal review and an internal review checklist has been prepared by the Office of the Privacy Commissioner NSW and can be accessed from its website <http://www.ipc.nsw.gov.au>.

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

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

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



NCAT can be contacted as follows:

**Website:** <http://www.ncat.nsw.gov.au/>

**Phone:** 1300 006 228

**Visit:** Level 10 John Maddison Tower, 86-90 Goulburn Street, Sydney NSW 2000

## **PART 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 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.

### **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 is reviewed from time to time. 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.

### **8.5    Regular review of Privacy Management Plan**

When information practices are reviewed from time to time, the Privacy Management Plan will also be reviewed to ensure that the Plan is up to date.

### **8.6    Alternative complaints process**

Should any person wish to have an issue resolved informally, the matter can be considered in accordance with Council's Complaints Handling policy. This policy is available from Council's website. A copy of all of Council's policies, including the complaint handling policy can be accessed on Council's website by clicking [here](#) should you require further information or clarification.

### 8.7 Memorandum of Understandings or Referral Arrangements

As of the date of this plan's endorsement, Council does not have any Memorandums of Understandings or referral arrangements with other agencies.

### 8.8 Offences

Part 8 of the PIPPA and HRIPA details offences for certain conduct. A table detailing the relevant penalties and associated provision has been provided below:

Offence	Maximum Penalty	Legislative Provision
It is a criminal offence for a public sector official to corruptly disclose and use personal or health information	• Fine of up to 100 penalty units (\$11,000), or • Imprisonment for two years, or both	• s 62 of PPIPA • s 68 of HRIPA
It is a criminal offence for a person to offer to supply personal or health information that has been disclosed unlawfully	• Fine of up to 100 penalty units (\$11,000), or • Imprisonment for two years, or both	• s63 of PPIPA • s69 of HRIPA
It is a criminal offence for a person – by threat, intimidation or misrepresentation – to persuade or attempt to persuade an individual: • to refrain from making or pursuing a request to access health information, a complaint to the Privacy Commissioner or the NSW Civil and Administrative Tribunal, or an application for an internal review; or • to withdraw such a request, complaint or application.	• Fine of up to 100 penalty units (\$11,000)	• s 70(1) of HRIPA
A person must not – by threat, intimidation or misrepresentation – require another person to give consent under HRIPA, or require a person to do, without consent, an act for which consent is required.	• Fine of up to 100 penalty units (\$11,000)	• s 70(2) of HRIPA
It is a criminal offence for a person to: • wilfully obstruct, hinder or resist the Privacy Commissioner or a member of the staff of the Privacy Commissioner • refuse or wilfully fail to comply with any lawful requirement of the Privacy Commissioner or a member of the staff of the Privacy Commissioner, or • wilfully make any false statement to or mislead, or attempt to mislead, the Privacy Commissioner or a member of	• Fine of up to 10 penalty units (\$1,100)	• s 68(1) of PPIPA

the staff of the Privacy Commissioner • in the exercise of their functions under PIIPA or any other Act		
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In addition to the above, under section 308H of the Crimes Act 1900, it is an offence to access or modify restricted data held in a computer where authorisation has not been provided. The maximum penalty for this offence being 2 years.

### 8.9 Accessibility

The Privacy Management Plan is available on Council's website, available for inspection at Council's Administration Building or upon request, can be mailed out to a nominated postal address.

### 8.10 Further information

A complaint can be made directly to the Privacy Commissioner through its [website](#) or in writing forwarded to the following contact:

The Information Commissioner  
By email – [ipcinfo@nsw.gov.au](mailto:ipcinfo@nsw.gov.au)  
In writing – GPO BOX 7100  
SYDNEY NSW 2000  
Or by phone – 1800 472 679

For assistance in understanding the processes under the PPIPA and HRIPA, please contact:

- 1) Privacy Contact Officer  
Port Stephens Council  
PO Box 42 (116 Adelaide Street)  
RAYMOND TERRACE NSW 2324  
Phone: (02) 4988 0255  
Facsimile: (02) 4988 0130  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)  
Internet: [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)
- 2) Information and Privacy Commission  
Level 11  
1 Castlereagh Street  
SYDNEY NSW 2000  
  
Phone: 1800 472 679  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Internet: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

**PART 9 – APPENDICES****APPENDIX 1: STATUTORY DECLARATION FOR ACCESS UNDER SECTION 57 OF THE PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 TO A PUBLIC REGISTER HELD BY COUNCIL****Statutory Declaration**  
**Oaths Act, 1900, Eighth Schedule**

I, the undersigned <sup>(1)</sup> ..... (1) insert full name

of <sup>(2)</sup> ..... (2) insert address

in the State of New South Wales, do solemnly and sincerely declare that:

I am <sup>(3)</sup> ..... (3) insert relationship, if any, to person inquired about

I seek to know whether <sup>(4)</sup> ..... (4) insert name

is on the public register of <sup>(5)</sup> ..... (5) Applicant to describe the relevant public register

The purpose for which I seek this information is <sup>(6)</sup> ..... (6) insert purpose for seeking information

.....

The purpose for which the information is required is to <sup>(7)</sup> ..... (7) insert purpose

.....

**And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1994.**

.....  
**Signature of Applicant**

Declared at: .....

in the said State this ..... day of ..... 20 .....

in the presence of .....

.....  
**Name of Justice of the Peace/Solicitor**

Who certifies that:

1. \*I saw the face of the declarant/deponent OR  
\*I did not see the face of the declarant/deponent because he/she was wearing a face covering, but I am satisfied that he/she had a special justification for not removing it, and
2. \*I have known the person for at least 12 months OR  
\*I confirmed the person's identity with .....  
[describe identification document relied on]

.....  
**Signature of Justice of the Peace/Solicitor to be printed**

**Appendix 2: Privacy Disclaimer template**

**YOUR PRIVACY**

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy.

**Purpose:** *a statement about why you are collecting the information.*

**Intended recipients:** *who will be using the information.*

**Supply:** *legally required OR voluntary.*

**Consequence of Non Provision:** *what happens if the information is not provided.*

**Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation.

**Access:** Please contact Council on (02) 4988 0255 to enquire how you can access information.

## ITEM 7 - ATTACHMENT 1 PRIVACY MANAGEMENT PLAN.

## CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>RM8 container No</b>	A2004-0135	<b>EDRMS record No</b>	
<b>Audience</b>	Public, Council employees, elected Council, volunteers and contractors		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Governance Section Manager		
<b>Review timeframe</b>	Three years	<b>Next review date</b>	1 September 2026
<b>Adoption date</b>	June 2000		

## VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	June 2000	Legal Officer	Adoption of Privacy Management Plan	
2.0	28 February 2006	Governance Coordinator	Reviewed Privacy Management Plan	432
3.0	10 March 2015	Governance Manager	Reviewed Privacy Management Plan to updated Model Plan from Office of Local Government	050

## ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.

Version	Date	Author	Details	Minute No.
4.0	28 March 2017	Governance Manager	<ol style="list-style-type: none"> <li>1. A full compliance review of Plan including the Information &amp; Privacy Commission checklist</li> <li>2. Remove appendices 2 to 6.</li> <li>3. Insert new appendix 2 with a privacy disclaimer which replaces those listed in item 2 above.</li> <li>4. Update appendix 1 with the privacy disclaimer.</li> <li>5. Reformat public registers into a table for ease of reading page 8 &amp; 9.</li> <li>6. Delete section 2.5 purpose of public register – now includes within the table listed in item 5 above.</li> <li>7. Reformatted Privacy Code of Practice in Local Government and Council policy section in Part 3, into a table for ease of reading, from page 13 on.</li> <li>8. Reformatted Council policy section in Part 3, into a table for ease of reading, from page 38 on.</li> <li>9. Updated contact details on page 56.</li> </ol>	069



## ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.

Version	Date	Author	Details	Minute No.
5.0	25 August 2020	Governance Section Manager	<ol style="list-style-type: none"> <li>1. A full compliance review of Plan including the Information &amp; Privacy Commission checklist</li> <li>2. Section 7.6 updated contact information and the privacy disclosure statement</li> <li>3. Added 'Section' to reflect amended position title in version control</li> <li>4. Part 3.6 added 20 working and removed reference to 28 days.</li> <li>5. Section 3:10 external and related bodies added 'Council employees'</li> <li>6. Section 5.3 included 'Information and Privacy Commission' and removed 'Office of the Privacy Commission'</li> <li>7. In part 2 added 'Code of practice' and added hyperlinks to website in the legislative table</li> </ol>	164

## ITEM 7 - ATTACHMENT 1      PRIVACY MANAGEMENT PLAN.

Version	Date	Author	Details	Minute No.
			<p>8. In Part 3, removed reference to Coastal Protection Act and updated to Coastal Management Act 2016</p> <p>9. In Part 3, updated Director General's position title to Deputy Secretary of Local Government, Planning and Policy</p> <p>10. In part 3.2 and 3.3 updated Land Title's Office to Land Registry Services</p> <p>11. In part 3.11 added 'utility provider' to agency types.</p>	

6.0		Governance Section Manager	<p>Updated numbering, hyperlinks and formatting</p> <ol style="list-style-type: none"> <li>1.</li> <li>2. Added part 6 'Data Breaches' to reflect amendments to PPIPA Act.</li> <li>3. 6.7 – Added link to Data Breach Policy</li> <li>4. HPP 5 and IPP 5 – Update of Management Directive titles. Added how the management directive ensures compliance with IPP5.</li> <li>5. HPP 10 – Added how this can be seen within Council.</li> <li>6. HPP 13 – Added examples of when a person may elect to remain anonymous and how this request can be made to Council.</li> <li>7. IPP 9 – Added "This however does not detract from the obligation on Council to take such steps as are reasonable to ensure that any personal information being used is accurate before using it."</li> </ol>	
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			<p>8. Added part 8.7 'Memorandum of Understandings or Referral Arrangements' to outline any arrangements Council has with other bodies.</p> <p>9. Added part 8.8 'Offences' to outline the offences under the PPIPA Act</p> <p>10. Added part 8.9 'Accessibility' to detail how and where this plan can be accessed.</p>	
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PORT STEPHENS  
COUNCIL

## Privacy Management Plan

council@portstephens.nsw.gov.au | 02 4988 0255

**PORTSTEPHENS.NSW.GOV.AU**    

**ITEM NO. 8****FILE NO: 24/69372  
EDRMS NO: PSC2021-03482****COUNCILLOR PROFESSIONAL DEVELOPMENT COURSE****REPORT OF:     TIMOTHY CROSDALE - GENERAL MANAGER  
DIRECTORATE:   GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves the enrolment and associated costs of Councillor Leah Anderson to undertake the Australian Institute of Company Directors (AICD) Company Directors Course, including membership costs, in accordance with the Payment of Expenses and Provision of Facilities for Mayor/Councillors policy.

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**BACKGROUND**

The purpose of this report is to seek Council's approval for Councillor Leah Anderson to undertake professional development. This professional development opportunity would also be open to the Mayor and all Councillors.

Councillor Anderson is seeking approval to enrol in the 5 day Australian Institute of Company Directors (AICD) Company Directors Course prior to August 2024.

The Company Directors Course gives a comprehensive grounding in the roles and duties of board directors and includes the following topics:

- 1) Governance and the Practice of Directorship.
- 2) The Legal Environment.
- 3) Risk and Strategy.
- 4) Financial Literacy and Performance.
- 5) Achieving Board effectiveness.

Professional membership in the AICD also provides members with ongoing access to AICD resources and continuing professional development requirements.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Governance	Provide and implement strategic direction and governance of Council

**FINANCIAL/RESOURCE IMPLICATIONS**

The cost of the course is \$8,800 for a member and \$11,900 for a non-member.

In addition, the annual membership cost is \$880 for the first year then \$660 for each year thereafter.

The course can be undertaken in a full-time or part-time capacity, either in person or virtually, with most courses held in Sydney or other capital cities. The course has limited availability in regional areas, including Newcastle, and is often oversubscribed. As at the time of drafting this report, the Newcastle Company Directors Course for 2024 is currently fully booked.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Payment of Expenses and Provision of Facilities for Mayor/Councillors policy provides for professional development of the Mayor and Councillors. Under this policy significant courses, such as the Company Directors Course, are required to be undertaken within the first 18 months of each Council term. It is available for Council to consider the merits of requests outside of this policy requirement on a case by case basis.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that there may be a breach of the Payment of Expenses and Provision of Facilities for Mayor/Councillors policy should Council not grant approval.	Low	Adopt the recommendation.	Yes.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Councillor Anderson has sought approval through the General Manager in accordance with the Payment of Expenses and Provision of Facilities for Mayor/Councillors policy.

**OPTIONS**

- 1) Accept the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

**ATTACHMENTS**

Nil.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM NO. 9**

**FILE NO: 24/78609**  
**EDRMS NO: PSC2022-02308**

**INFORMATION PAPERS**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 9 April 2024.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Designated Persons Return	203
2	Delegations Report	204
3	Council Resolutions	206

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# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 24/73885  
EDRMS NO: PSC2022-01241**

**DESIGNATED PERSONS RETURN**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to table Councillor and Designated Persons' Return/s (return) submitted.

In accordance with the Part 4 – Pecuniary Interest of the Code of Conduct, all designated persons are required to submit a return. Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who have submitted return/s:

- Cadet Planner PSC1185.

**ATTACHMENTS**

Nil.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.

**ITEM NO. 2**

**FILE NO: 24/27750  
EDRMS NO: PSC2009-00965**

## **DELEGATIONS REPORT**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

## **BACKGROUND**

The purpose of this report is to advise Council of each occasion the Mayor and/or General Manager have exercised their delegations, other than under section 226 and 335 of the Local Government Act 1993, which are conferred on each role.

The report at **(ATTACHMENT 1)** provides details of the delegation exercised, such as the delegated authority, the date and the reason for exercising the delegation.

## **ATTACHMENTS**

1) Delegations Report. [↓](#)

## **COUNCILLORS' ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**MAYOR AND GENERAL MANAGER DELEGATION REPORT**

<b>Date exercised</b>	<b>Delegations exercised</b>	<b>Purpose</b>	<b>Role exercising delegation</b>	<b>Reported to Council</b>
25/03/2024	Code of Meeting Practice	Approval of Public Access application - Local Housing Strategy.	Deputy Mayor	09/04/2024

**ITEM NO. 3**

**FILE NO: 24/67308  
EDRMS NO: PSC2017-00106**

## **COUNCIL RESOLUTIONS**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

## **BACKGROUND**

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

## **ATTACHMENTS**

- 1) Community Futures resolutions. [↓](#)
- 2) Corporate Strategy and Support resolutions. [↓](#)
- 3) Facilities and Infrastructure resolutions. [↓](#)
- 4) General Manager's Office resolutions. [↓](#)

## **COUNCILLORS' ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

## ITEM 3 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Community Futures	<b>Date From:</b>	10/10/2023
	<b>Committee:</b>		<b>Date To:</b>	12/03/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 27 March 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
	Ordinary Council 10/10/2023	Lamont, Brock  Peart, Steven	URGENCY MOTION: Wind Farm Industry	30/06/2024		
<b>27 Mar 2024</b> The General Manager has written to the requested delegates as outlined within the motion. A Councillor briefing with DCCEEW was undertaken on 20 February 2024. Council's delegation met with the Minister on 19 March 2024. Council is working to complete all outstanding actions as endorsed.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/11/2023	Lamont, Brock  Peart, Steven	Administrative Amendment to the Port Stephens Local Environmental Plan 2013	31/05/2024	29/11/2023	
3						23/324875
<b>27 Mar 2024</b> Items 4, 6, 7 and 8 of the planning proposal to amend the Port Stephens Local Environmental Plan 2023 have been forwarded to the NSW DPHI for a Gateway determination and request authority to make the plan. Council is working to find a suitable time to meet with Councillors for further discussions in regard to items 1, 2, 3 and 5.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/11/2023	Lamont, Brock  Peart, Steven	RAMSAR Listing for Mambo Wanda Wetlands	28/06/2024	29/11/2023	
4						23/324875
<b>27 Mar 2024</b> The General Manager has written to the Federal and State Minister for Environment outlining the resolution of Council. A Councillor briefing will be scheduled once a response from both Ministers has been received.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/12/2023	Lamont, Brock  Peart, Steven	Draft Shoal Bay Place Plan	26/04/2024	14/12/2023	
5						23/359154
<b>27 Mar 2024</b> The draft Shoal Bay Place Plan finished public exhibition on 25 February 2024. Submissions are being collated and considered. The final Place Plan is anticipated to be reported back to Council for consideration at the meeting of 23 April 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Lamont, Brock  Peart, Steven	Draft Port Stephens Development Control Plan 2014 - Chapter D12 Richardson Road	1/12/2024	28/02/2024	
2						24/50158
<b>27 Mar 2024</b> Council resolved to defer Draft DCP - Chapter D12 Richardson Road for a Two-way conversation with the Mayor and Councillors to discuss the original motion and subsequent amendment. Council is reviewing work plans to integrate preparation and a Two-way will be scheduled to facilitate further discussions.						



<b>Action Sheets Report</b>	<b>Division:</b>	Community Futures	<b>Date From:</b>	10/10/2023
	<b>Committee:</b>		<b>Date To:</b>	12/03/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 27 March 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Lamont, Brock	Draft Port Stephens Development Control Plan - Road Network and Parking (Electric Vehicles)	1/12/2024	28/02/2024	
3 014		Pearl, Steven				24/50158
<b>27 Mar 2024</b> Council resolved to endorse the Port Stephens Development Control Plan 2014 Chapter B8 Road Network and Parking (electric vehicles) and provide public notice. Council is reviewing work plans to integrate outstanding actions and further report preparation.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Lamont, Brock	Exhibition of draft Port Stephens Coastal Management Program	31/05/2024		
4 015		Pearl, Steven				24/50158
<b>27 Mar 2024</b> Council endorsed the draft Coastal Management Program and associated appendices to be placed on public exhibition, commencing 28 February 2024 and concluding on 28 March 2024. Council has commenced complementary community engagement. A further report is forecasted to be presented to Council for consideration at its meeting of 28 May 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/03/2024	Gardner, Janelle	Policy Review: Public Art Policy	10/04/2024	13/03/2024	
8 032		Pearl, Steven				24/63800
<b>27 Mar 2024</b> Council endorsed to place the Revised Public Art Policy on exhibition for a period of 28 days from Thursday 14 March 2024 to Wednesday 10 April 2024. Should no submissions be received, the policy will be adopted without a further report to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/03/2024	Grobbelaar, Evert	Notification from Developers Prior to Clearing of Major Vegetation	25/06/2024	13/03/2024	
1 037		Pearl, Steven				24/63800
<b>27 Mar 2024</b> A report outlining options to require developers to notify Council prior to the commencement of clearing of major vegetation will be prepared for a future Council meeting.						



ITEM 3 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Community Futures	<b>Date From:</b>	10/10/2023
	<b>Committee:</b>		<b>Date To:</b>	12/03/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 27 March 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/03/2024	Lamont, Brock	Revised Local Housing Strategy	7/05/2024	27/03/2024	
1 043		Pearl, Steven				24/75831
<b>27 Mar 2024</b> Council resolved to place the revised Port Stephens Local Housing Strategy on public exhibition for a period of 28 days. Council commenced the public exhibition period on 2 April 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/03/2024	Lamont, Brock	Draft Port Stephens Development Control Plan - Chapter B1 Tree Management and B2 Flora and Fauna	7/05/2024	27/03/2024	
2 044		Pearl, Steven				24/75831
<b>27 Mar 2024</b> Council resolved to place the draft Port Stephens Development Control Plan 2014 Chapter B1 Tree Management and B2 Flora and Fauna on public exhibition for a period of 28 days. Council commenced the public exhibition period on 2 April 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/03/2024	Lamont, Brock	Draft Voluntary Planning Agreement - Hanson Construction Materials Pty Ltd	3/05/2024	27/03/2024	
3 045		Pearl, Steven				24/75831
<b>27 Mar 2024</b> Council resolved to place the draft Voluntary Planning Agreement between Council and Hanson Constructions Materials Pty Ltd, together with the accompanying explanatory note on public exhibition for a period of 28 days. Council commenced the public exhibition period on 28 March 2024.						

**ITEM 3 - ATTACHMENT 2 CORPORATE STRATEGY AND SUPPORT RESOLUTIONS.**



<b>Division:</b>	Corporate Strategy and Support	<b>Date From:</b>	27/08/2013
<b>Committee:</b>		<b>Date To:</b>	12/03/2024
<b>Officer:</b>			
<b>Action Sheets Report</b>		<b>Printed:</b>	Wednesday, 27 March 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/08/2013	Pattison, Zoe Pattison, Zoe	Campvale Drain	30/06/2024		
<b>27 Mar 2024</b> Awaiting final execution of easement documentation for 2 properties. All other properties (with exception of these 2) have been finalised.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/10/2022	Pattison, Zoe Pattison, Zoe	Policy Review: Property Investment and Development Policy	30/06/2024	12/10/2022	
1						22/273002
<b>27 Mar 2024</b> Public Exhibition deferred to allow for further clarification on the distribution of funds.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/10/2022	Pattison, Zoe Pattison, Zoe	Policy Review: Acquisition and Divestment of Land	30/06/2024	12/10/2022	
2						22/273002
<b>27 Mar 2024</b> Report deferred to allow for further clarification on the distribution of funds.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Pattison, Zoe Pattison, Zoe	22 Homestead Street, Salamander Bay	31/12/2024	12/04/2023	
5 088						23/92450
<b>27 Mar 2024</b> Council is investigating options for the rezoning of 22 Homestead Street, Salamander Bay, and the development of a Vegetation Management Plan, to provide the best opportunity to enable a successful long-term rehabilitation of the site.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/08/2023	Pattison, Zoe Pattison, Zoe	Raymond Terrace Gateway Site Masterplan	30/07/2024		
1 193						23/214729
<b>27 Mar 2024</b> Following a two way conversation with Councillors in November 2023, the options presented will be included in the context of the broader Raymond Terrace town centre improvements.						

## ITEM 3 - ATTACHMENT 2 CORPORATE STRATEGY AND SUPPORT RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Corporate Strategy and Support	<b>Date From:</b>	27/08/2013
	<b>Committee:</b>		<b>Date To:</b>	12/03/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 27 March 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/11/2023	Pattison, Zoe	Sale of closed roads in Raymond Terrace	30/06/2024	29/11/2023	
1		Pattison, Zoe				23/324875
<b>27 Mar 2024</b> Recommendation endorsed to close roads 1 and 2. Council staff to undertake an EOI for road 3 and provide a report back to Council for consideration of whether to continue with the road closure.						

**ITEM 3 - ATTACHMENT 3      FACILITIES AND INFRASTRUCTURE  
RESOLUTIONS.**



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities and Infrastructure	<b>Date From:</b>	11/04/2023
	<b>Committee:</b>		<b>Date To:</b>	12/03/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 27 March 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Maretich, John	Naming Recreation Precinct at Medowie after Geoff Dingle	30/06/2024	12/04/2023	
2085		Kable, Gregory				23/92450
<b>27 Mar 2024</b>						
Once the reserve has been subdivided as per the Medowie Place Plan, an application will be submitted to the Geographical Naming Board to name the recreation precinct after Geoff Dingle.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/02/2024	Kable, Gregory	Council Chambers	31/05/2024	14/02/2024	
1008		Kable, Gregory				24/37059
<b>27 Mar 2024</b>						
Council staff will investigate design options and report back to Councillors in a Two Way meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/02/2024	Gutsche, Tammy	Waste	31/05/2024	14/02/2024	
2009		Kable, Gregory				24/37059
<b>27 Mar 2024</b>						
Council staff will continue to work with the Waste Contractor and will provide an update after the Easter Public Holiday period and April School Holidays.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Maretich, John	Raymond Terrace 7 Day Makeover	23/07/2024		
10020		Kable, Gregory				24/50158
<b>27 Mar 2024</b>						
The scope of works is being developed with Council staff and Councillors.						



<b>Action Sheets Report</b>	<b>Division:</b>	General Manager's Office	<b>Date From:</b>	11/04/2023
	<b>Committee:</b>		<b>Date To:</b>	12/03/2024
	<b>Officer:</b>		<b>Printed:</b>	Wednesday, 27 March 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Walker, Ashley	Financial Assistance	30/04/2024	12/04/2023	
3		Crosdale, Timothy				23/92450
083						
<b>27 Mar 2024</b>						
Awaiting necessary paperwork to finalise payments.						

# CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of Council, Councillors, staff or Council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.