



Privacy Management Plan 2023 - 2024



Acknowledgement

Shellharbour City Council acknowledges the Traditional Custodians of Dharawal Country and recognises their continued connection to the land. We pay our respects to Elders past, present and emerging and the contribution they make to the life of this city.

Review History

Council Meeting - 28 November 2023

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1. INTRODUCTION

Shellharbour City Council collects, stores, and uses a broad range of information for the purpose of facilitating its business. A significant part of that information is personal and health information. It is important that the community and Council Officials understand how Council manage personal information.

This Privacy Management Plan has been created in accordance with Section 33 of the *Privacy and Personal Information Protection Act 1998* (NSW) to explain how personal information is collected, its purpose and how council protects the privacy of individuals.

This Plan outlines how Shellharbour City Council complies with the legislative requirements of:

- *Privacy and Personal Information Protection Act 1998* (NSW) (PIPP Act)
- *Health Records and Information Privacy Act 2002* (HRIP Act)
- *Privacy Code of Practice for Local Government* (the Code).

Nothing in this plan is to:

- Affect any matter of interpretation of the Codes, Information Protection Principles and/or 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.

1.1 What is personal information?

Under the *Privacy and Personal Information Protection Act 1998* personal information means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Information that can be classed as personal cannot be listed exhaustively. Below are common examples of information that generally falls into the category of personal information for the purposes of the *Government Information (Public Access) Act 2009*:

- A person's name
- Personal address and contact details – such as email address and phone numbers
- Information about a person's family life
- Financial information – including bank accounts and investments
- Employment information – including details of salaries, personnel records, recruitment information such as job recommendation and referee reports
- A person's signature
- Photographs, audio or video recordings including CCTV footage which identifies individuals
- Information about a person's hobbies or interests
- Information about a person's education – including the degree they obtained and the marks they were awarded
- Membership of voluntary or professional bodies – including trade unions
- Information about a person's religion
- Information about sexual preference
- Medical and health information.

1.2 What is not personal information?

There are some kinds of information that are not personal information, these include:

- Information about someone who has been dead for more than 30 years
- Information about someone that is contained in a publicly available publication
- Information or an opinion about a person's suitability for employment as a public sector official.

The *Privacy and Personal Information Protection Regulation 2019* lists other information that is not personal information, such as information about someone that is contained in:

- A document in a library, art gallery or museum
- State records under the control of the NSW State Archives and Records
- Public archives (within the meaning of the *Copyright Act 1968* (Cth))

Other information that is not considered personal information can be found in [Privacy and Personal Information Protection Act 1998](#) Part 1 Section 4(3).

The following are examples of 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.

1.3 What is Health information?

Section 6 of the [Health Records and Information Privacy Act 2002](#) defines what health information is as this is a more specific type of personal information.

Health information can include information or an opinion about a person's physical or mental health or disability, a person's express wishes about the future provision of their health services or a health service provided to a person.

This can also include, for example, a psychological report, blood test or an x-ray, results from drug and alcohol tests, information about a person's medical appointments, and personal information that is collected to provide a health service such as a name and telephone number.

1.4 Why does Council collect Personal and Health Information?

Council collects personal information in a variety of ways in order to efficiently perform the services and functions delivered to Shellharbour City. Council assesses the level of personal information that is appropriate to be collected in relation to each function undertaken with a view to minimise the amount of such information that is collected and managed.

Personal and Health information may be collected from:

- Members of the public
- NSW and Commonwealth public sector agencies
- Businesses
- Non-government organisations
- Employees
- Medical professionals.

Contractors acting on Council's behalf may also collect personal information. Council includes clauses in its contracts that require contractors to comply with relevant privacy obligations.

Council has a range of functions involving the collection of personal and/or health information, including:

- Levying and collecting rates
- Providing services – such as libraries and waste collection
- Consultation with the community, businesses and other stakeholders
- Assessing development and major project applications
- Recording, investigating and managing complaints and allegations
- Site inspections and audits
- Incident management
- Enforcing regulations and legislation
- Issuing approvals, consents, licence and permits
- Providing grant funding
- Maintaining the non-residential register of electoral information
- Employment practices, including assessing fitness for work.

1.5 How does Council collect Personal and Health Information?

Council collects personal and health information in a variety of ways including:

- Incident reports
- Medical assessment reports
- Submissions
- Application forms
- CCTV Footage
- Financial transaction records
- Contracts
- Customer enquiries and correspondence
- Web services and smart devices (the Internet of Things)

1.6 Unsolicited Information

Unsolicited information is personal or health information provided to Council in circumstances where Council has not asked for or required the information to be provided. Such information is not deemed to have been collected by Council but the access, storage, use and disclosure Information Protection Principles and Health Privacy Principles will apply to any such information.

Personal information contained in petitions received in response to a call for submissions or unsolicited petitions tabled at Council meetings will be treated the same as any other submission and may be made available for release to the public.

Personal or health information disclosed publicly and recorded for the purposes of webcasting at Council Meetings is not deemed to have been collected by Council. Retention and Use principles of this information will apply to such information in Council's possession, however, Disclosure principles will not apply as the information was voluntarily disclosed with the prior knowledge that it would be recorded, broadcast via the internet to the public and made available by the Council for public viewing.

1.7 Privacy Protection Notice

Under section 10 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act), when Council collects personal information from an individual, such as their name, address, telephone number or email address, Council 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 is made aware of:

- The purposes for which the information is being collected
- The intended recipients of the information
- Whether the supply of the information is required by law or is voluntary
- Any consequences for the individual if the information (or any part of it) is not provided
- Ways the individual can access and correct the information.

Where possible, individuals providing personal information will be given the opportunity to consent to the terms of the provision of the information via a Privacy Protection Notice.

Council staff are encouraged to consult with the Privacy Officer or Governance Team to ensure that each collection of personal information, and any accompanying Privacy Protection Notice is appropriate and complies with Council's privacy requirements.

1.8 Personal and Health Information held by Council

The following is a list of examples of the types of personal and health information and circumstances in which Council may collect this information in exercising Council functions:

1.8.1 Councillors

Council holds personal information concerning Councillors, such as:

- Personal contact information
- Code of Conduct matters
- Pecuniary interest returns
- Entitlements to fees, expenses and facilities
- Bank account details

1.8.2 Customers, ratepayers and residents

Council holds personal and health information in its records such as:

- Rates records
- Development applications and submissions
- Library membership and lending records
- Burial and cremation records
- Leases, Licences and Agreements
- Waste service records
- Customer requests
- Financial records
- Donation, Grant and Sponsorship applications
- Photos of vehicle registration plates
- Community service utilisation records
- Age and disability support records
- Responses to clean up notices regarding health issues
- The Links Shell Cove records

- Aquatics records – Learn to Swim applications
- Public Forum Addresses Declaration
- Council Meetings and Public Forum webcasts
- CCTV footage
- Youth health information – for excursions
- Submissions and information collected as part of Council's community engagement and consultation activities

1.8.3 Employees, volunteers and contractors

Council holds personal and health information concerning its employees, volunteers and contractors, such as:

- Personal contact information
- Recruitment material
- Bank account details
- Public Interest Disclosures
- Leave and payroll data
- Performance management plans
- Code of Conduct matters
- Disclosure of interest returns
- Wage and salary entitlements
- Immunisation records and medical certificates
- Pre-employment medical information
- Workers' compensation claims
- Volunteers' medical information

1.9 How does Council manage Personal and Health Information collected and held by Council?

As outlined throughout this plan, Council collects and manages information from a multitude of sources in accordance with the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act). Council endeavours to make as much information available, to individuals whose information Council collects and holds, at the time of collection. Additional information is detailed below for services and functions that frequently collect personal and/or health or manage significant amounts of personal information or data.

1.9.1 Requests for Service, Enquiries and Correspondence

Council receives a significant number of requests for service, general enquiries and correspondence which personal information is required to be collected to allow Council to perform these functions. These requests for service and enquiries are made by people:

- Over the telephone – Council does not record telephone conversations, however Council issued mobile phones do have a voicemail service
- In writing – email, letter, fax, online form
- In person – At all Council facilities such as Civic Centre, Pools, The Links, Waste Depot

Council determines the appropriate level of personal information to be collected for each type of service request and enquiry to allow sufficient information to be an accurate record of the issue and assistance given, but Council will not collect unnecessary personal and/or health information.

If Council receives written correspondence, a full copy of whatever is sent is generally kept in Council's electronic document management system. The provision of any personal information is entirely voluntary, and in that respect personal information may be provided that is unsolicited.

Telephone conversations are not electronically recorded. If someone has an enquiry that cannot be answered straight away, the Council staff member will offer to take the person's name and telephone number or email address, so that another officer of Council can respond.

1.9.2 Complaints and Regulatory Functions

Council receives complaints from members of the public to investigate potential non-compliances with legislation, development consents, operating approvals etc. The majority of these investigations are handled in accordance with the relevant legislation governing Council's activities in particular functions.

Council recognises that some people may wish to remain anonymous, and clear information regarding the consequences of remaining anonymous must be provided. For example, Council may not be able to properly investigate or consider a complaint or review a matter if sufficient information about the matter is not received.

To appropriately investigate most matters, Council officers may be required to collect personal information from those parties involved, including names and address, but may also involve detailed correspondence or witness statements for complicated matters.

Council endeavours to maintain the confidentiality of complainants wherever possible, however, at times Council may be required to provide personal information of complainants to other parties due to legislative or court requirements.

1.9.3 Development Assessment and Land Use Planning

Anyone with an interest in a Development Application is welcome to make a submission, or give feedback, about a proposed development, but this must be done in writing. Any submissions made are public documents, and other people can view them upon request, Shellharbour City Council will redact any personal information contained in each submission.

1.9.4 Staff and Recruitment

Council collects personal and/or health information from staff members as part of the recruitment process. Council will never ask for more personal information than is required for that purpose.

Staff

During the recruitment process and throughout employment, information (including personal and/or health information) is collected from staff members for various reasons, such as leave management, workplace health and safety and to help Council to operate with transparency and integrity.

Information collected by Council is retained, to the extent necessary and managed securely. In the exercise of its functions, Council collects and manages personal information about its staff including but not limited to:

- Medical conditions and illnesses
- Next of kin and contact details
- Education
- Performance and development information
- Family and care arrangements
- Secondary employment
- Conflicts of interest
- Banking details for payroll purposes
- Employment history
- Details of licences essential to the performance of an officer's role.

Recruitment

When people apply for jobs at Council, they are required to submit personal information, including their name, contact details and work history. Council provides this information to the interview panel for that particular position. The personal information is only used for the purposes of the recruitment process. After recruitment successful applicants are required to fill out various forms in order to commence employment at Shellharbour City Council. These forms require further personal and health information, such as the applicant's:

- Bank account details
- Tax file number
- Emergency contact details
- Any disabilities that may impact their work.

These forms are sent to Human Resources to be used for employment purposes, such as payroll and setting up personnel files. This information is retained in secure storage systems.

1.9.5 Visitors and members of the public

When consultants, contractors and members of the public visit a Council facility they may be required to sign in to the premises. The record of entry may be recorded in a physical sign-in register or via a digital check in process.

Council may restrict entry or refuse provision of a service if the check in process is not observed. Any check in data collected by Council will be held securely and destroyed on a regular basis in accordance with provisions under the *State Records Act 1998* and Council's Records Management Policy.

1.9.6 Communications and stakeholder engagement

Subscriber, mailing and contact lists

Council offers residents and interested stakeholders the opportunity to stay up to date on the activities of Council via electing to subscribe to various electronic newsletters produced by Council. These services are on an opt-in basis and personal contact information is supplied to Council voluntarily by subscribers. No personal information is collected without consent and those who provide their information are advised as to how Council will manage it.

The information generally collected includes names and email addresses and in some cases areas of interest.

All lists are kept separate from each other and each is used solely for the purpose intended. Anyone can subscribe or unsubscribe themselves from newsletter lists or contact Council to change their details. Council does not destroy these lists; they are kept as long as they remain current. Individual entries are deleted upon request or if an error message is received in response to a Council communication.

Community engagement and public consultation

Council regularly undertakes public consultation to help guide the decision making and provision of services. Council conducts the majority of these public consultation activities via the [Let's Chat Shellharbour](#) website.

Council collects information from you when you register to use the site. This includes your email address and additional demographic information as provided by you on the registration form. Council collects information about your usage of the site, such as pages visited, documents downloaded etc.

Council collects this information in order to:

- Analyse and interpret it to help meet Council's objectives and obligations
- Communicate information to you about engagement opportunities, events and other initiatives
- Respond to enquiries and otherwise engage with stakeholders.

Council Website and Service Providers

Council engages a number of service providers who provide software, website, internet services and computer systems through which Council may collect, store or process your personal information. On occasion Council providers may have access to your personal information to facilitate services on behalf of Council. Council ensures that the providers adhere to the same legislative requirements in relation to Privacy.

Cookies

Council uses 'cookie' technology to collect additional website data usage and to improve its services. A cookie is a small piece of text sent to your browser by Council's website. This helps your website to remember your preferences and it makes your next visit easier and the site more useful to you. Councils uses cookies for the following purposes:

- To better understand how you interact with Council's services
- To monitor aggregate usage by users and web traffic routing on Council's services
- To improve Council's services.

Most internet browsers automatically accept cookies. You can restrict that by editing your browsers options to stop accepting cookies or to prompt you before accepting a cookie from the websites you visit.

Personal Contact Details

Council engages service providers who assist Council in the distribution and communication of a variety of Council communication requirements. These may include printing and distribution of Council rate notices and/or Council newsletters etc.

To facilitate this Council's service providers are required to have access to personal information of residents and ratepayers to facilitate distribution of these materials on behalf of Council. Council ensures that the providers adhere to the same legislative requirements in relation to Privacy.

Social Media

Council use social networking services such as Facebook, Instagram and LinkedIn, in addition to traditional methods, to connect with our audience. These include responding to customer enquiries in real time and promoting Council services and facilities. Council's use of social media sites also involves listening to social trends and issues that relate to Council services and events. Council use various tools to view public social media and website commentary in which Council's accounts may not necessarily be tagged. This allows Council to engage directly with members of the public to provide information and/or a better level of customer service. In doing so, Council may temporarily collect and store personal information.

To protect privacy and the privacy of others, please do not include any personal information including phone numbers and email addresses. Please do not share personal information about others. Any personal information collect by Council will be handled in line with this Plan. The social networking service will also handle your personal information for its own purposes. These sites have their own privacy policies.

The Internet of Things

The Internet of Things is a broad term that generally refers to physical devices connected to the internet that collect, share or use data. The Internet of Things devices and the data collected can provide convenience, efficiency and insights into essentially every aspect of the world. For Council, the Internet of Things will provide many benefits and has the potential to generate great public value. These large collections of data can, in many cases, constitute personal, health and sensitive information.

Given the passive nature of many Internet of Things devices it can be difficult for individuals to ascertain if their personal information is being collected by and Internet of Things device. For example, if 'smart bin' technology is introduced it is not possible to have a privacy collection notice on every bin in the city. Council will provide details of what data it collects and what the data will be used for and who it will be shared with, for future Internet of Things devices as they are established. However, this will most likely occur via centralised methods, such as the Council website, rather than at each device or collection point. Council will not use any personal information without permission and will use collated and de-identified data instead.

1.10 How to access and amend personal and health information?

Council ensures that people can access and amend information that Council holds about them.

Individuals wanting to access Council's records to confirm or amend their own personal or health information, such as updating contact details can do so by contacting Council in writing. Council will take steps to verify the identity of the person requesting access to information.

Individuals wanting to amend their own personal or health information must put the request to Council in writing.

This application must contain the following information:

- The full name, date of birth and contact details of the person making the request
- State whether the application is under the PIPP Act or HRIP Act
- Explain what personal or health information the person wishes to amend
- Confirmation of the applicant's identity

Accessing or amending other people's personal or health information

Council is restricted from giving individuals access to someone else's personal or health information unless that person provides Council with written consent. An authorised person must confirm their identification to act on behalf of someone else.

There may be other reasons Council is authorised to disclose personal and health information, such as in the event of a serious and imminent threat to the life, health and safety of the individual, to find a missing person or for compassionate reasons.

1.11 Promoting Privacy

1.11.1 Compliance Strategy

During induction, and on a regular basis, all employees will be made aware of this Privacy Management Plan and it will be made available on Council's Intranet and Council's website.

Council officials will be regularly acquainted with the general provisions of the:

- *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act)
- *Health Records and Information Privacy Act 2002* (HRIP Act)
- Shellharbour City Council's Privacy Management Plan
- Information Protection Principles
- Health Privacy Principles
- Privacy Code of Practice for Local Government
- Any other applicable Code of Practice.

1.11.2 Communication Strategy

Council will promote awareness of this plan and rights under *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act), *Health Records and Information Privacy Act 2002* (HRIP Act) and this Privacy Management Plan to Council officials by:

- Providing an overview at inductions and including a copy of the plan in induction packs
- Publishing the plan on Council's internal and external websites
- Providing specialised on the job training to key groups

1.11.3 Promoting the Plan to the Community

Council promotes public awareness of this Privacy Management Plan to the community by:

- Making it publicly available and publishing it on Council's website
- Writing the plan in plain English
- Telling people about the Privacy Management Plan when they enquire about personal and/or health information
- Provide a link on Council's website to the [Information and Privacy Commission - New South Wales](#) website
- Including privacy statements on application forms and invitations for community engagement.

2. PUBLIC REGISTERS

2.1 What is a Public Register?

Under the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) a public register is a register of personal information that is required by law to be made, or is made, publicly available or open to public inspection. Enquiries about public registers can be made via Council's website.

Part 6 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) prevents Council employees from disclosing personal information held on public registers, unless the information is to be used for a purpose relating to the purpose of the register.

Members of the public may enquire only in accordance with the primary purpose of any of the public registers.

2.2 Shellharbour City Council's Public Registers

<i>Local Government Act 1993</i>		
REGISTER	SECTION	PRIMARY PURPOSE
Council Land Register	Section 53	Identify all land vested in Council, or under its control. The secondary purpose includes a consideration of public accountability as to the land held by Council.
Record of Approvals	Section 113	Identify all approvals granted under the Act.
Register of Disclosures of Interests by Councillors and Designated Persons	Section 440AAB	Determine whether or not a Council official has a pecuniary interest in any matter with which the Council is likely to be concerned. A secondary purpose is corresponding public accountability and third-party access.
Register of declarations of disclosures of political donations	Section 328(a)	A register of copies of current declarations of disclosures of political donations lodged with the New South Wales Electoral Commission by or on behalf of councillors of the council concerned (including in their capacity as candidates for election as councillors).
Voting on Planning Matters Register	Section 375(a)	A register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
Record of Rates and Charges	Section 602	Record the value of a parcel of land and record rate liability in respect of the land.
Investments Register	Section 625	Details of all investments currently held by Council.
<i>Government Information (Public Access) Act 2009</i>		
Contracts Register	Section 27	Identify all contracts over the value of \$150,000 entered into by Council.

<i>Environmental Planning and Assessment Act 1979</i>		
Register of Consents and Certificates	Section 4.58	Identify applications for development consent and other approvals, confirm determinations on appeal and identify applications for complying development certificates.
Record of Building Certificates	Section 6.26(8)	Identify all building certificates.
<i>Environmental Planning and Assessment Regulation 2021</i>		
Development Contributions Register	Section 217	Details of all contributions to Council required to be made by a developer of land within the Shellharbour local government area.
Planning Agreements Register	Section 206	Identify all agreements Council enters into with another party in relation to a proposed development.
<i>Protection of the Environment Operations Act 1997</i>		
Public register of Licences Held	Section 308	Identify all licences granted under the Act.
<i>Impounding Act 1993</i>		
Record of Impounding	Section 30 and 31	Identify any impounding action by Council.
<i>Graffiti Control Act 2008</i>		
Graffiti Removal register	Section 13	Records the work carried out by Council under the Act.
<i>Cemeteries and Crematoria Act 2013</i>		
Cemetery Operator's Register	Section 63	Register of interment rights, memorials, cremations and interments.

2.2 Suppression of Personal Information

Under section 58 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act), a person whose personal information is contained, or proposed to be contained, in a public register, may request Council to have the information removed from, or not placed on the register.

If Council is satisfied that the safety and/or wellbeing of any person would be affected by not suppressing the personal information, Council will suppress the information in accordance with the request.

An application for suppression must be made in writing, addressed to the Chief Executive Officer, contain sufficient detail outlining the reasons for the request, any supporting documentation to allow for the proper assessment of the application, and be verified by a statutory declaration.

3. DATA BREACHES

3.1 What is a data breach?

A data breach occurs when there is a failure that has caused or has the potential to cause unauthorised access to Council's physical or electronic information or data, such as:

- Accidental loss or theft of information or equipment on which such information is stored
- Unauthorised use, access to or modification of data or information systems to gain access or make changes to data or information
- Accidental or unauthorised disclosure of personal information – such as email containing personal information sent to incorrect recipient
- Personal information published or posted on Council's website without consent
- Access to data by an authorised user for unauthorised reasons – such as an employee looking up information in a system for personal reasons in breach of the Code of Conduct
- Accidental disclosure of personal information through phishing
- Malware infection
- Disruption to or denial of IT services.

A data breach most commonly, but not exclusively, results in unauthorised access to, or the unauthorised collection, use, or disclosure of personal information.

3.2 How will Council manage a data breach?

Council will manage an actual or suspected data breach in line with the *Privacy and Personal Information Protection Act 1998*, Mandatory Data Breach Notification Scheme and Council's Data Breach Policy which is publicly available on Council's website.

The Data Breach Policy sets out how Council will respond to a data breach of Council held information.

The objectives of the policy are to:

- Provide guidance to Shellharbour City Council employees in responding to a data breach of council held information.
- Provide examples of situations considered to constitute a data breach.
- Detail the steps to respond to a data breach.
- Outline the considerations around notifying persons whose privacy may be affected by the breach.

4. REVIEW RIGHTS AND COMPLAINTS PROCESS

Shellharbour City Council encourages individuals to try to resolve privacy issues through an informal resolution, before undertaking the review process. Any person who may have a privacy concern can contact Council for advice or for referral to the Privacy Officer.

4.1 Internal review

Under Part 5 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) individuals have the right to seek an internal review if they believe that Council has breached the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) or *Health Records and Information Privacy Act 2002* (HRIP Act) relating to their own personal and health information. Individuals cannot seek an internal review for a breach of someone else's privacy, unless they are an authorised representative of the other person.

4.2 Internal review process

Applications for an internal review must:

- Be in writing
- Specify a postal and/or email address in Australia to which the review response can be sent
- Be made within 6 months of when the affected person first became aware of the conduct or decision that is the subject of the application.

The Privacy Officer or their delegate will conduct the internal review. If the internal review is about the conduct of the Privacy Officer, the Chief Executive Officer will appoint another person to conduct the internal review. The reviewing officer will refer to the Privacy Commissioner's guidance materials when carrying out an internal review. [IPC - Fact Sheet & Checklist - Internal Review](#)

Council will acknowledge receipt of an internal review within 5 working days and complete an internal review within 60 calendar days.

Within 14 days of completing an internal review, Council will notify the applicant of the following:

- The findings of the review
- The action proposed to be taken by Council and the reasons for taking that action (if any)
- The right of the applicant to have those findings and Council's proposed action, administratively reviewed by the NSW Civil and Administrative Tribunal.

4.3 The role of the Privacy Commissioner in the review process

The Privacy Commissioner has an oversight role in how privacy complaints are handled and is entitled to make submissions to Council regarding internal reviews.

If Council receives an internal review application, it will:

- Notify the Privacy Commissioner of the application as soon as practicable
- Keep the Privacy Commissioner informed of the progress of the internal review
- Inform the Privacy Commissioner of the findings of the review and the action proposed to be taken by Council in relation to the matter.

An individual can also make a complaint directly to the Privacy Commissioner about an alleged breach of their privacy.

4.4 External review by the NSW Civil and Administrative Tribunal (NCAT)

If the applicant remains unsatisfied with the outcome of an internal review or is not notified of an outcome within 60 days, they have the right to seek an external review and may make application to the NSW Civil and Administrative Tribunal (NCAT) for a review of Councils conduct.

An application for external review can only be made after an internal review has been completed and must be made within 28 days from the date of the internal review decision.

5. LEGISLATIVE REQUIREMENTS

This section contains a general summary of how Council must manage personal and health information under the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act), *Health Records and Information Privacy Act 2002* (HRIP Act) other relevant laws.

For more information, please refer directly to the relevant legislation or contact Shellharbour City Council.

The *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) provides for the protection of personal information by means of 12 Information Protection Principles whilst *Health Records and Information Privacy Act 2002* (HRIP Act) provides for the protection of health information by means of 15 Health Information Protection Principles.

Shellharbour City Council complies with the Information Protection Principles (IPPs) prescribed under PIPP Act and the Health Privacy Principles (HPPs) prescribed under HRIP Act as outlined below.

5.1 How Council complies with the principles

5.1.1 Collection

	Information Protection Principle	Health Privacy Principle
<p>Lawful Council will only collect personal information for a lawful purpose that is directly related to a function or activity of Council and is reasonably necessary for that purpose.</p> <p>Council will not collect any more personal information than is reasonably necessary to fulfill its proper functions.</p> <p>Anyone engaged by Council as a 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.</p> <p>Any forms, notices or requests by which personal information is collected by Council, including information collected electronically or on Council's website, will be referred to the Privacy Officer prior to adoption or use.</p>	1	1
<p>Direct Council will only collect information directly from the individual to whom the information relates (or parents/guardians if the individual is under the age of 16), unless authorised by the individual to whom the information relates.</p> <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>Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised or required not to comply with the principle under any Act or Law.</p>	2	3
<p>Open Council will take reasonable steps to inform people why their information is being collected, what it will be used for, and to whom it will be disclosed.</p> <p>A Privacy Statement is included on Council's website and on forms where personal information is collected.</p>	3	4

<p>Relevant Council will take reasonable steps to ensure that personal or health information collected is relevant and accurate, is not excessive and does not unreasonably intrude into people's personal affairs.</p> <p>Council will, in normal circumstances, rely on the provider of the information regarding accuracy and completeness, although in special circumstances some verification processes may be necessary or appropriate.</p>	4	2
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5.1.2 Storage

	Information Protection Principle	Health Privacy Principle
<p>Secure Council will store personal information securely, keep it no longer than necessary and dispose of it appropriately. This information will also be protected from unauthorised access, use, modification or disclosure.</p>	5	5

5.1.3 Access and Accuracy

	Information Protection Principle	Health Privacy Principle
<p>Transparent Council is transparent about the information that is held and why it is used.</p> <p>Individuals can request to access their own information to determine whether Council hold their information, the nature and main purposes for which it is held, how it is stored and how long it will be held for.</p> <p>Should an individual seek information generally about the nature of any information held, council may ask for advice on the types of dealings the applicant has had with council to assist to conduct the search.</p>	6	6
<p>Accessible Council will allow people access to their information on receipt of a written request without unreasonable delay or expense.</p> <p>Compliance of this principle does not allow disclosure of information about other people. Where an individual's personal and/or health information is contained in documents that also contain information about others, any application for access will need to be made and processed under the <i>Government Information (Public Access) Act 2009</i>.</p>	7	7

<p>Correct</p> <p>Council will allow people to update, correct or amend their information, if necessary, to ensure information is accurate, relevant, up to date, complete and not misleading.</p> <p>Changes of name, address and other minor amendments, require appropriate supporting documentation. Where substantive amendments are involved, a written application will be required. The application should set out the grounds on which changes are sought.</p> <p>Council will seek to notify recipients of amendments to personal information as soon as possible, where it is reasonably practicable.</p>	8	8
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5.1.4 Use

	Information Protection Principle	Health Privacy Principle
<p>Accurate</p> <p>Council will take all reasonable steps necessary to make sure the personal information is relevant, accurate, up to date and complete before using it.</p>	9	9
<p>Limited</p> <p>Council will only use personal information for the purpose it was collected, unless the person has consented to another use or:</p> <ul style="list-style-type: none"> • The other purpose is directly related to the purpose for which the information was collected. • The use is necessary to prevent or lessen a serious and imminent threat to the life or health of any person. • The use is reasonably necessary for law enforcement purposes or protection of public revenue. • The information is to be used for a reason as specified under 'Exemptions, directions and codes of practice' section of this plan. <p>Council may use information for a variety of purposes. For example, the names and addresses of individual property owners kept as part of Councils rates record to:</p> <ul style="list-style-type: none"> • Notify neighbours of proposed development • Evaluate a road opening or obstruction • Evaluate tree preservation orders 	10	10

5.1.5 Disclosure

	Information Protection Principle	Health Privacy Principle
<p>Restricted / Limited</p> <p>Council do not disclose personal information without consent, to a person (other than the individual to whom the information relates) or other body, unless:</p> <ul style="list-style-type: none"> • The disclosure is directly related to the purpose for which the information was collected. • Council believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of any person. • The individual expressly consents to the disclosure. For example, Council may provide information about an employee or former employee to a potential employer, or verifying details concerning wages to a financial institution. • The disclosure is made in connection with proceedings for an offence, law enforcement purposes, the protection of public revenue or to investigate an offence where there are reasonable grounds to believe an offence may have been committed. 	11	11
<p>Safeguarded</p> <p>Council do not disclose sensitive personal information without consent unless it is necessary to prevent a serious and imminent threat to the life or health of an individual, in relation to the following:</p> <ul style="list-style-type: none"> • Ethnicity or racial origin • Political opinions • Religious or philosophical beliefs • Health or sexual activities • Trade union membership. <p>Council will not disclose this information to any person or body that is outside of NSW unless:</p> <ul style="list-style-type: none"> • The recipient of the information is subject to similar information privacy principles or laws regarding personal information, or • It is necessary to investigate an offence or where there are reasonable grounds to believe an offence has been or may be committed. • 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 providing health or community services who is employed or engaged by a public sector agency. 	12	-

<ul style="list-style-type: none"> Where a disclosure is to be made to a public sector agency for the purpose of informing the Minister for Local government or the Premier about a matter within their administration. 		
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5.1.6 Identifiers and Anonymity

	Information Protection Principle	Health Privacy Principle
Identifiers Council will only give an identification number to health information if it is reasonably necessary to carry out Council functions effectively.	-	12
Anonymity Where Council provides health services, it will allow for individuals to stay anonymous where it is lawful and practical to do so.	-	13

5.1.7 Transfers and Linkages

	Information Protection Principle	Health Privacy Principle
Transfers Council will only transfer health information outside of NSW where satisfied that this is required by law, or otherwise in accordance with the <i>Health Records and Information Privacy Act 2002</i> (HRIP Act).	-	14
Linkages Council do not currently use a health records linkage system.	-	15

5.2 Exemptions and the Privacy Code of Practice for Local Government

Part 2, Division 3 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) contains exemptions that may permit Shellharbour City Council to not comply with Information Protection Principles in certain situations. These include the following:

- Council is not required to comply with IPP's 2-3, 6-8, or 10-12 if lawfully authorised or required not to do so,
- Council is not required to comply with IPP 2 if the information concerned is collected in relation to court or tribunal proceedings.

For example, Section 23(3) of the PIPP Act provides that Council is not required to comply with collection requirements if the information concerned is collected for law enforcement purposes such as the issue of a penalty infringement notice.

Council must comply with the *Privacy Code of Practice for Local Government* as prepared by the Office of the Privacy Commissioner. Under the *Privacy Code of Practice for Local Government* where it is reasonably necessary, Council may indirectly collect and use personal information to confer an award, prize or similar form of personal recognition on the person about who the information relates.

The *Privacy Code of Practice for Local Government* also permits Council to use personal information for a purpose other than the purpose for which it was collected where the use is in pursuance of Council's lawful and proper functions and Council is satisfied that the personal information is reasonably necessary for the exercise of those functions.

For example, the Rates Record that Council holds under section 602 of the *Local Government Act 1993* may be used to:

- Notify neighbours of a proposed development
- Evaluate a road opening
- Evaluate a tree preservation order.

5.3 Offences

Under section 62-68 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) it is an offence for Council to:

- Intentionally disclose or use personal information for an unauthorised purpose
- Supply personal information that has been disclosed unlawfully
- Hinder the Privacy Commissioner or their employees from doing their job.

5.4 Exemptions and the Health Records and Information Privacy Code of Practice 2005

Exemptions are located mainly in Schedule 1 to the HRIP Act and may permit Council not to comply with HPPs in certain situations. For example, Council is not required to comply with HPPs 4-8, and 10 if lawfully authorised or required not to do so.

The *Health Records and Information Privacy Code of Practice 2005* applies to Council. It permits, in certain limited circumstances, the collection, use and disclosure of health information between human services agencies without the consent of the person to whom the health information relates. A human services agency is a public sector agency that provides welfare services, health services, mental health services, disability services, drug and alcohol treatment services, housing and support services and/or education services.

5.5 Offences

Under section 68-70 of the *Health Records and Information Privacy Act 2002* (HRIP Act) it is an offence for Council to:

- Intentionally disclose or use health information for an unauthorised purpose
- Offer to supply health information that has been disclosed unlawfully.

6. CONTACT DETAILS

For assistance in understanding the processes under the *Privacy and Personal Information Protection Act 1998 (NSW)* (PIPP Act) and *Health Records and Information Privacy Act 2002* (HRIP Act), please contact Shellharbour City Council's Privacy Officer or the Information and Privacy Commission.



Contact us



Visit us:

Shellharbour Civic Centre
76 Cygnet Avenue, Shellharbour City Centre
8:30am to 4:30pm – Monday to Friday



Phone us:

4221 6111 – available 24 hours per day



Email us:

council@shellharbour.nsw.gov.au



Write to us:

The Chief Executive Officer, Shellharbour City Council
Dharawal Country, Locked Bag 155,
Shellharbour City Centre NSW 2529



Website:

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Information and Privacy Commission NSW

Phone us:

1800 472 679

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ipcinfo@ipc.nsw.gov.au

Write to us:

GPO Box 7011
SYDNEY NSW 2001

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Phone us:

1300 006 228

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PO Box K1026
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