



ATTACHMENTS TO REPORTS OF THE BLAYNEY SHIRE COUNCIL
MEETING
HELD ON TUESDAY 16 DECEMBER 2025

CORPORATE SERVICES REPORTS

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Code of Meeting Practice

Policy	1C
Officer Responsible	Director Corporate Services
Last Review Date	XX/XX/2025

Strategic Policy

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Please note that the [blue text](#) in this document are supplementary additions by Council to the model code.

1 INTRODUCTION

This Model Code of Meeting Practice for Local Councils in NSW (the Model Meeting Code) is prescribed under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021* (the Regulation).

The Model Meeting Code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

A council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.

2 MEETING PRINCIPLES

2.1 Council and committee meetings should be:

Transparent: Decisions are made in a way that is open and accountable.

Informed: Decisions are made based on relevant, quality information.

Inclusive: Decisions respect the diverse needs and interests of the local community.

Principled: Decisions are informed by the principles prescribed under Chapter 3 of the Act.

Trusted: The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.

Effective: Meetings are well organised, effectively run and skilfully chaired.

Orderly: Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

Note: The Office of Local Government has issued a guideline on free speech in local government in NSW. The Guideline provides practical guidance to councils on what free speech means in the context of NSW local government, including in relation to council meetings. The Guidelines have been issued under section 23A of the Act meaning councils must consider them when exercising their functions at meetings.

3 BEFORE THE MEETING

Timing of ordinary council meetings

- 3.1 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings. Ordinary meetings of the council will be held on the following occasions:

Council shall meet at 6:00pm on the fourth Tuesday of each month at the Blayney Shire Community Centre. Where a Council meeting falls on a Tuesday that is a public holiday, the Council meeting shall be ~~held on the Tuesday of the following week unless~~ as otherwise determined.

Council shall adopt an annual schedule of dates for Council and Council Committee meetings no later than the September meeting.

Any change from the date or commencement time of a Council meeting shall be by resolution of the Council or, in emergency circumstances, by the authorisation of the Mayor.

Extraordinary meetings

- 3.2 If the mayor receives a request in writing, signed by at least two (2) councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The mayor can be one of the two councillors requesting the meeting.

Note: Clause 3.2 reflects section 366 of the Act.

- 3.3 The mayor may call an extraordinary meeting without the need to obtain the signature of two (2) councillors.

Notice to the public of council meetings

- 3.4 The council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings, and of each meeting of committees of the council.

Note: Clause 3.4 reflects section 9(1) of the Act.

- 3.5 For the purposes of clause 3.4, notice of a meeting of the council and of a committee of council must be published before the meeting takes place. The notice must be published on the council's website, and in such other manner that the council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.

- 3.6 For the purposes of clause 3.4, notice of more than one (1) meeting may be given in the same notice.

Notice to councillors of ordinary council meetings

- 3.7 The general manager must send to each councillor, at least three (3) days before each meeting of the council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

Note: Clause 3.7 reflects section 367(1) of the Act.

- 3.8 The notice and the agenda for, and the business papers relating to, the meeting may be given to councillors in electronic form, unless the council determines otherwise, but only if all councillors have facilities to access the notice, agenda and business papers in that form.

Note: Clause 3.8 reflects section 367(3) of the Act.

Notice to councillors of extraordinary meetings

- 3.9 Notice of less than three (3) days may be given to councillors of an extraordinary meeting of the council in cases of emergency.

Note: Clause 3.9 reflects section 367(2) of the Act.

Giving notice of business to be considered at council meetings

- 3.10 A councillor may give notice of any business they wish to be considered by the council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted **14 days before the meeting is to be held**.
- 3.11 A councillor may, in writing to the general manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.

Questions with notice

- 3.12 A councillor may, by way of a notice submitted under clause 3.10, ask a question for response by the general manager about the performance or operations of the council.
- 3.13 A councillor is not permitted to ask a question with notice under clause 3.12 that would constitute an act of disorder.
- 3.14 The general manager or their nominee may respond to a question with notice submitted under clause 3.12 by way of a report included in the business papers for the relevant meeting of the council.

Agenda and business papers for ordinary meetings

- 3.15 The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.

- 3.16 The general manager must ensure that the agenda for an ordinary meeting of the council states:
- (a) all matters to be dealt with arising out of the proceedings of previous meetings of the council, and
 - (b) if the mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
 - (c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
 - (d) any business of which due notice has been given under clause 3.10.
- 3.17 Nothing in clause 3.16 limits the powers of the mayor to put a mayoral minute to a meeting without notice under clause 9.7.
- 3.18 The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is, or the implementation of the business would be, unlawful. The general manager must report, without giving details of the item of business, any such exclusion to the next meeting of the council.
- 3.19 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public, the general manager must ensure that the agenda of the meeting:
- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
 - (b) states the grounds under section 10A(2) of the Act relevant to the item of business.

Note: Clause 3.19 reflects section 9(2A)(a) of the Act.

- 3.20 The general manager must ensure that the details of any item of business which, in the opinion of the general manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to councillors for the meeting concerned. Such details must not be included in the business papers made available to the public and must not be disclosed by a councillor or by any other person to another person who is not authorised to have that information.

Availability of the agenda and business papers to the public

- 3.21 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the council and committees of council, are to be published on the council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the council, at the relevant meeting and at such other venues determined by the council.

Note: Clause 3.21 reflects section 9(2) and (4) of the Act.

- 3.22 Clause 3.21 does not apply to the business papers for items of business identified under clause 3.19 as being likely to be considered when the meeting is closed to the public.

Note: Clause 3.22 reflects section 9(2A)(b) of the Act.

- 3.23 For the purposes of clause 3.21, copies of agendas and business papers must be published on the council's website and made available to the public at a time that is as close as possible to the time they are available to councillors.

Note: Clause 3.23 reflects section 9(3) of the Act.

- 3.24 A copy of an agenda, or of an associated business paper made available under clause 3.21, may in addition be given or made available in electronic form unless the council determines otherwise.

Note: Clause 3.24 reflects section 9(5) of the Act.

Agenda and business papers for extraordinary meetings

- 3.25 The council must ensure that the agenda for an extraordinary meeting of the council deals only with the matters stated in the notice of the meeting.
- 3.26 Nothing in clause 3.25 limits the powers of the mayor to put a mayoral minute to an extraordinary meeting without notice under clause 9.7.
- 3.27 Despite clause 3.25, business may be considered at an extraordinary meeting of the council at which all councillors are present, even though due notice has not been given of the business, if the council resolves to deal with the business on the grounds that it is urgent and requires a decision by the council before the next scheduled ordinary meeting of the council. A resolution adopted under this clause must state the reasons for the urgency.
- 3.28 A motion moved under clause 3.27 can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with. Despite any other provision of this code, only the mover of a motion moved under clause 3.27, and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.
- 3.29 If all councillors are not present at the extraordinary meeting, the council may only deal with business at the meeting that councillors have not been given due notice of, where a resolution is adopted in accordance with clause 3.27 and the chairperson also rules that the business is urgent and requires a decision by the council before the next scheduled ordinary meeting.
- 3.30 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.29 on whether a matter is urgent.

Prohibition of pre-meeting briefing sessions

- 3.31 Briefing sessions must not be held to brief councillors on business listed on the agenda for meetings of the council or committees of the council.

Note: The prohibition on the holding of briefing sessions under clause 3.31 reflects the intent of Chapter 4, Part 1 of the Act which requires business of the council to be conducted openly and transparently at a formal meeting of which due notice has been given and to which the public has access. Pre-meeting briefing sessions are inconsistent with the principles of transparency, accountability and public participation and have the potential to undermine confidence in the proper and lawful decision-making processes of the council.

- 3.32 Nothing in clause 3.31 prevents a councillor from requesting information from the general manager about a matter to be considered at a meeting, provided the information is also available to the public. Information requested under this clause must be provided in a way that does not involve any discussion of the information. [Any requests shall be in writing to the General Manager and any information provided shall be furnished by way of an Addendum to the Business Paper on Council's website. All requests for information shall be made prior to 3pm on the day of the meeting.](#)

4 PUBLIC FORUMS

- 4.1 The council may hold a public forum prior to meetings of the council and committees of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to meetings of other committees of the council.
- 4.2 The council may determine the rules under which public forums are to be conducted and when they are to be held.
- 4.3 The provisions of this code requiring the livestreaming of meetings also apply to public forums.
- 4.4 Public forums may be held by audio-visual link.
- 4.5 Public forums are to be chaired by the mayor or their nominee.
- 4.6 To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum for items on the agenda must be received by 5pm the business day before the date on which the public forum is to be held and must identify the item of business on the agenda of the council meeting the person wishes to speak on.
- 4.7 A person may apply to speak on no more than 1 item of business on the agenda of the council meeting, unless approved otherwise by the chairperson.
- 4.8 Any representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a representative when applying to speak at the public forum.
- 4.9 The general Manager or their delegate may refuse an application to speak at a public forum. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 4.10 No more than two (2) speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the council meeting, unless approved otherwise by the chairperson.
- 4.11 If more than the permitted number of speakers applies to speak 'for' or 'against' any item of business, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to address the council on the item of business. If the speakers are not able to agree on whom to nominate to address the council, the general manager or their delegate is to determine who will address the council at the public forum.
- 4.12 Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, no more than two (2) days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.

- 4.13 The general manager or their delegate is to determine the order of speakers at the public forum.
- 4.14 Each speaker will be allowed five (5) minutes to address the council. This time is to be strictly enforced by the chairperson.
- 4.15 Speakers at public forums must not digress from the item on the agenda of the council meeting they have applied to address the council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to so digress. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 4.16 A councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
- 4.17 Speakers are under no obligation to answer a question put under clause 4.16. Answers by the speaker, to each question are to be limited to two (2) minutes.
- 4.18 Speakers at public forums cannot ask questions of the council, councillors, or council staff.
- 4.19 The general manager or their nominee may, with the concurrence of the chairperson, address the council for up to five (5) minutes in response to an address to the council at a public forum after the address and any subsequent questions and answers have been finalised.
- 4.20 Where an address made at a public forum raises matters that require further consideration by council staff, the general manager may recommend that the council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.21 When addressing the council, speakers at public forums must comply with this code and all other relevant council codes, policies, and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the council's code of conduct or making other potentially defamatory statements.
- 4.22 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.21, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.23 Clause 4.22 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.
- 4.24 Where a speaker engages in conduct of the type referred to in clause 4.21, the general manager or their delegate may refuse further applications from that person to speak at public forums for such a period as the general manager or their delegate considers appropriate.

- 4.25 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the councillor who made the declaration.

Note: Public forums should not be held as part of a council or committee meeting. Council or committee meetings should be reserved for decision-making by the council or committee of council.

- 4.26 Council will, as required hold the public forum at 5.30pm on the day of the Council Ordinary and Extraordinary meetings.
- 4.27 Approved speakers will be notified of their speaking time by email.

5 COMING TOGETHER

Attendance by councillors at meetings

- 5.1 All councillors must make reasonable efforts to attend meetings of the council and of committees of the council of which they are members.

Note: A councillor may not attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected or a meeting at which the councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.

- 5.2 The council may determine standards of dress for councillors when attending meetings.

- 5.3 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting, unless permitted to attend the meeting by audio-visual link under this code.

- 5.4 Deleted

- 5.5 Where a councillor is unable to attend one or more meetings of the council or committees of the council, the councillor should submit an apology for the meetings they are unable to attend, state the reasons for their absence from the meetings and request that the council grant them a leave of absence from the relevant meetings.

- 5.6 The council must not act unreasonably when considering whether to grant a councillor's request for a leave of absence.

- 5.7 Where a councillor makes an apology under clause 5.5, the council must determine by resolution whether to grant the councillor a leave of absence for the meeting for the purposes of section 234(1)(d) of the Act. If the council resolves not to grant a leave of absence for the meeting, it must state the reasons for its decision in its resolution.

- 5.8 A councillor's civic office will become vacant if the councillor is absent from three (3) consecutive ordinary meetings of the council without prior leave of the council, or leave granted by the council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

Note: Clause 5.8 reflects section 234(1)(d) of the Act.

The quorum for a meeting

- 5.9 The quorum for a meeting of the council is a majority of the councillors of the council who hold office at that time and are not suspended from office.

Note: Clause 5.9 reflects section 368(1) of the Act.

- 5.10 Clause 5.9 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.

Note: Clause 5.10 reflects section 368(2) of the Act.

- 5.11 A meeting of the council must be adjourned if a quorum is not present:
- (a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
 - (b) within half an hour after the time designated for the holding of the meeting, or
 - (c) at any time during the meeting.
- 5.12 In either case, the meeting must be adjourned to a time, date, and place fixed:
- (a) by the chairperson, or
 - (b) in the chairperson's absence, by the majority of the councillors present, or
 - (c) failing that, by the general manager.
- 5.13 The general manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.
- 5.14 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety or welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster or a public health emergency, the mayor may, in consultation with the general manager and, as far as is practicable, with each councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council's website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.
- 5.15 Where a meeting is cancelled under clause 5.14, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the council or at an extraordinary meeting called by the mayor under clause 3.3.

Meetings held by audio-visual link

- 5.16 A meeting of the council or a committee of the council may be held by audio-visual link where the mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of councillors and staff at risk. The mayor must make a determination under this clause in consultation with the general manager and, as far as is practicable, with each councillor.

- 5.17 Where the mayor determines under clause 5.16 that a meeting is to be held by audio-visual link, the general manager must:
- (a) give written notice to all councillors that the meeting is to be held by audio-visual link, and
 - (b) take all reasonable steps to ensure that all councillors can participate in the meeting by audio-visual link, and
 - (c) cause a notice to be published on the council's website and in such other manner the general manager is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.
- 5.18 This code applies to a meeting held by audio-visual link under clause 5.16 in the same way it would if the meeting was held in person.

Note: Where a council holds a meeting by audio-visual link under clause 5.16, it is still required under section 10 of the Act to provide a physical venue for members of the public to attend in person and observe the meeting.

Attendance by councillors at meetings by audio-visual link

- 5.19 Councillors may attend and participate in meetings of the council and committees of the council by audio-visual link with the approval of the council or the relevant committee where they are prevented from attending the meeting in person because of ill-health or other medical reasons or because of unforeseen caring responsibilities.
- 5.20 Clause 5.19 does not apply to meetings at which a mayoral election is to be held.
- 5.21 A request by a councillor for approval to attend a meeting by audio-visual link must be made in writing to the general manager prior to the meeting in question and must provide reasons why the councillor will be prevented from attending the meeting in person. [Such a request shall be lodged by no later than 9.30am on the day of the meeting to assist alteration of standard meeting set-up for remote meeting attendance.](#)
- 5.22 Councillors may request approval to attend more than one meeting by audio-visual link. Where a councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.21.
- 5.23 The council must comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002* when collecting, holding, using and disclosing health information in connection with a request by a councillor to attend a meeting by audio-visual link.
- 5.24 A councillor who has requested approval to attend a meeting of the council or a committee of the council by audio-visual link may participate in the meeting by audio-visual link until the council or committee determines whether to approve their request and is to be taken as present at the meeting. The

councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.

- 5.25 A decision whether to approve a request by a councillor to attend a meeting of the council or a committee of the council by audio-visual link must be made by a resolution of the council or the committee concerned. The resolution must state the meetings the resolution applies to.
- 5.26 If the council or committee refuses a councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.
- 5.27 A decision whether to approve a councillor's request to attend a meeting by audio-visual link is at the council's or the relevant committee's discretion. The council and committees of the council must act reasonably when considering requests by councillors to attend meetings by audio-visual link.
- 5.28 The council and committees of the council may refuse a councillor's request to attend a meeting by audio-visual link where the council or committee is satisfied that the councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the council or a committee of the council by audio-visual link.
- 5.29 This code applies to a councillor attending a meeting by audio-visual link in the same way it would if the councillor was attending the meeting in person. Where a councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.
- 5.30 A councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.
- 5.31 A councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the council or the committee into disrepute.

Entitlement of the public to attend council meetings

- 5.32 Everyone is entitled to attend a meeting of the council and committees of the council. The council must ensure that all meetings of the council and committees of the council are open to the public.

Note: Clause 5.32 reflects section 10(1) of the Act.

- 5.33 Clause 5.32 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.

5.34 A person (whether a councillor or another person) is not entitled to be present at a meeting of the council or a committee of the council if expelled from the meeting:

- (a) by a resolution of the meeting, or
- (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Note: Clause 5.34 reflects section 10(2) of the Act.

5.35 On the adoption of this code and at the commencement of each council term, the council must determine whether to authorise the person presiding at a meeting to exercise a power of expulsion.

Livestreaming of meetings

5.36 Each meeting of the council or a committee of the council is to be recorded by means of an audio-visual device.

5.37 At the start of each meeting of the council or a committee of the council, the chairperson must inform the persons attending the meeting that:

- (a) the meeting is being recorded and made publicly available on the council's website, and
- (b) persons attending the meeting should refrain from making any defamatory statements.

5.38 The recording of a meeting is to be made publicly available on the council's website at the same time as the meeting is taking place.

5.39 The recording of a meeting is to be made publicly available on the council's website for at least 12 months after the meeting or for the balance of the council's term, whichever is the longer period.

5.40 Clauses 5.36 - 5.39 do not apply to any part of a meeting that has been closed to the public in accordance with section 10A of the Act.

Note: Clauses 5.36 – 5.40 reflect section 236 of the Regulation.

5.41 Recordings of meetings may be disposed of in accordance with the *State Records Act 1998*.

Attendance of the general manager and other staff at meetings

5.42 The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all of the members are councillors.

Note: Clause 5.42 reflects section 376(1) of the Act.

5.43 The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

Note: Clause 5.43 reflects section 376(2) of the Act.

- 5.44 The general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of employment of the general manager.

Note: Clause 5.44 reflects section 376(3) of the Act.

- 5.45 The attendance of other council staff at a meeting, (other than as members of the public) shall be determined by the general manager in consultation with the mayor.

6 THE CHAIRPERSON

The chairperson at meetings

- 6.1 The mayor, or at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.

Note: Clause 6.1 reflects section 369(1) of the Act.

- 6.2 If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

Note: Clause 6.2 reflects section 369(2) of the Act.

Election of the chairperson in the absence of the mayor and deputy mayor

- 6.3 If no chairperson is present at a meeting of the council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.

- 6.4 The election of a chairperson must be conducted:

- (a) by the general manager or, in their absence, an employee of the council designated by the general manager to conduct the election, or
- (b) by the person who called the meeting or a person acting on their behalf if neither the general manager nor a designated employee is present at the meeting, or if there is no general manager or designated employee.

- 6.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.

- 6.6 For the purposes of clause 6.5, the person conducting the election must:

- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
- (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.

- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.

- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the council:

- (a) any councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
- (b) every councillor present must be silent to enable the chairperson to be heard without interruption.

7 MODES OF ADDRESS

- 7.1 Where physically able to, councillors and staff should stand when the mayor enters the chamber and when addressing the meeting.
- 7.2 If the chairperson is the mayor, they are to be addressed as 'Mr Mayor', 'Madam Mayor' or 'Mayor'.
- 7.3 If the chairperson is the deputy mayor, they are to be addressed as 'Mr Deputy Mayor', or 'Madam Deputy Mayor' or 'Deputy Mayor'.
- 7.4 Where the chairperson is not the mayor or deputy mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson' or 'Chair'.
- 7.5 A councillor is to be addressed as 'Councillor [surname]'.
- 7.6 A council officer is to be addressed by their official designation or as Mr/Ms/Mx [surname].

8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

8.1 *The general order of business for an ordinary meeting of the council shall be:*

- (1) *Livestreaming Video and Audio Check*
- (2) *Recording of Meeting Statement*
- (3) *Acknowledgment of Country*
- (4) *Apologies for non-attendance, applications for leave of absence or by attendance by audio-visual link by councillors*
- (5) *Disclosure(s) of Interests*
- (6) *Statement of Ethical Obligations*
- (7) *Public Forum*
- (8) *Mayoral Minute*
- (9) *Confirmation of Minutes of previous meeting(s)*
- (10) *Matters arising from Minutes*
- (11) *Reports of Staff*
 - I. *Planning and Environmental Services*
 - II. *Executive Services*
 - III. *Corporate Services*
 - IV. *Infrastructure Services*
- (12) *Notice(s) of Motion*
- (13) *Delegate Reports*
- (14) *Matters of Urgency*
- (15) *Closed Meeting*

8.2 The order of business as fixed under clause 8.1 may be altered for a particular meeting of the council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

8.3 Despite any other provision of this code, only the mover of a motion referred to in clause 8.2 and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.

9 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS

Business that can be dealt with at a council meeting

- 9.1 The council must not consider business at a meeting of the council:
- (a) unless a councillor has given notice of the business, as required by clause 3.10, and
 - (b) unless notice of the business has been sent to the councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.
- 9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
- (a) is already before, or directly relates to, a matter that is already before the council, or
 - (b) is the election of a chairperson to preside at the meeting, or
 - (c) is a matter or topic put to the meeting by way of a mayoral minute, or
 - (d) is a motion for the adoption of recommendations of a committee of the council.
- 9.3 Despite clause 9.1, business may be considered at a meeting of the council at which all councillors are present even though due notice has not been given of the business to councillors, if the council resolves to deal with the business on the grounds that it is urgent and requires a decision by the council before the next scheduled ordinary meeting. A resolution adopted under this clause must state the reasons for the urgency.
- 9.4 A motion moved under clause 9.3 can be moved without notice. Despite any other provision of this code, only the mover of a motion referred to in clause 9.3 and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.
- 9.5 If all councillors are not present at a meeting, the council may only deal with business at the meeting that councillors have not been given due notice of, where a resolution is adopted in accordance with clause 9.3, and the chairperson also rules that the business is urgent and requires a decision by the council before the next scheduled ordinary meeting.
- 9.6 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.5.

Mayoral minutes

- 9.7 The mayor may, by minute signed by the mayor, put to the meeting without notice any matter or topic that the mayor determines should be considered at the meeting.
- 9.8 A mayoral minute, when put to a meeting, takes precedence over all business on the council's agenda for the meeting. The mayor may move the adoption of a mayoral minute without the motion being seconded.

- 9.9 A recommendation made in a mayoral minute put by the mayor is, so far as it is adopted by the council, a resolution of the council.

Staff reports

- 9.10 A recommendation made in a staff report is, so far as it is adopted by the council, a resolution of the council.

Reports of committees of council

- 9.11 The recommendations of a committee of the council are, so far as they are adopted by the council, resolutions of the council.
- 9.12 If in a report of a committee of the council distinct recommendations are made, the council may make separate decisions on each recommendation.

Questions

- 9.13 A question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.10 and 3.12, unless the council determines otherwise in accordance with this code.
- 9.14 A councillor may, through the chairperson, ask another councillor about a matter on the agenda.
- 9.15 A councillor may, through the mayor, ask the general manager about a matter on the agenda. The general manager may request another council employee to answer the question.
- 9.16 A councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to information. Where a councillor or council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the council.
- 9.17 Councillors must ask questions directly, succinctly, and without argument.
- 9.18 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or council employee.

10 RULES OF DEBATE

Motions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 10.2 A councillor who has submitted a notice of motion under clause 3.10 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 10.3 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it, they may request its withdrawal at any time. If the notice of motion is withdrawn after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the chairperson is to note the withdrawal of the notice of motion at the meeting unless the council determines to consider the notice of motion at the meeting.
- 10.4 In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of the council:
- (a) any other councillor may, with the leave of the chairperson, move the motion at the meeting, or
 - (b) the chairperson may defer consideration of the motion until the next meeting of the council.

Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.

Amendments to motions

- 10.8 An amendment to a motion must be moved and seconded before it can be debated.
- 10.9 An amendment to a motion must relate to the matter being dealt with in the original motion before the council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 10.10 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.

- 10.11 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one (1) motion and one (1) proposed amendment can be before council at any one time.
- 10.12 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.13 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.14 An amendment may become the motion without debate or a vote where it is accepted by the councillor who moved the original motion.

Limitations on the number and duration of speeches

- 10.15 A councillor who, during a debate at a meeting of the council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.16 A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 10.17 A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than five (5) minutes at any one time.
- 10.18 Despite clause 10.17, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than five (5) minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.19 Despite clauses 10.15 and 10.16, a councillor may move that a motion or an amendment be now put:
- (a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it, or
 - (b) if at least two (2) councillors have spoken in favour of the motion or amendment and at least two (2) councillors have spoken against it.
- 10.20 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.19. A seconder is not required for such a motion.
- 10.21 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.15.

- 10.22 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 10.23 All councillors must be heard without interruption and all other councillors must, unless otherwise permitted under this code, remain silent while another councillor is speaking.
- 10.24 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.
- 10.25 Clause 10.24 does not prevent a further motion from being moved on the same item of business where the original motion is lost provided the motion is not substantially the same as the one that is lost.

11 VOTING

Voting entitlements of councillors

11.1 Each councillor is entitled to one (1) vote.

Note: Clause 11.1 reflects section 370(1) of the Act.

11.2 The person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

Note: Clause 11.2 reflects section 370(2) of the Act.

11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

11.4 Deleted

Voting at council meetings

11.5 A councillor who is present at a meeting of the council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.

11.6 If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor's dissenting vote is recorded in the council's minutes.

11.7 The decision of the chairperson as to the result of a vote is final unless the decision is immediately challenged and not fewer than two (2) councillors rise and call for a division.

11.8 When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are recorded in the council's minutes for the meeting.

11.9 When a division on a motion is called, any councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 11.5 of this code.

11.10 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

11.11 Voting at council meetings closed to the public, must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment (including the use of the casting vote) being recorded.

Voting on planning decisions

- 11.12 The council or a council committee must not make a final planning decision without receiving a staff report containing an assessment and recommendation in relation to the matter put before the council for a decision.
- 11.13 Where the council or a council committee makes a planning decision that is inconsistent with the recommendation made in a staff report, it must provide reasons for its decision and why it did not adopt the staff recommendation.
- 11.14 The general manager must keep a register containing, for each planning decision made at a meeting of the council or a council committee (including, but not limited to a committee of the council), 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.
- 11.15 For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- 11.16 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 11.17 Clauses 11.14–11.16 apply also to meetings that are closed to the public.

Note: Clauses 11.14–11.17 reflect section 375A of the Act.

Note: The requirements of clause 11.14 may be satisfied by maintaining a register of the minutes of each planning decision.

12 COMMITTEE OF THE WHOLE

- 12.1 The council may resolve itself into a committee to consider any matter before the council.

Note: Clause 12.1 reflects section 373 of the Act.

- 12.2 All the provisions of this code relating to meetings of the council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provisions limiting the number and duration of speeches and encouraging councillors and staff to stand when addressing the meeting.

Note: Clauses 10.15 – 10.25 limit the number and duration of speeches.

Note: Clause 7.1 encourages councillors and staff to stand when addressing the meeting where they can.

- 12.3 The general manager or, in the absence of the general manager, an employee of the council designated by the general manager, is responsible for reporting to the council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full, but any recommendations of the committee must be reported.
- 12.4 The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council's minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.

13 DEALING WITH ITEMS BY EXCEPTION

- 13.1 The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution where it considers it necessary to expedite the consideration of business at a meeting.
- 13.2 Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The council or committee must not resolve to adopt any item of business under clause 13.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 8.2.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1.

14 CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC

Grounds on which meetings can be closed to the public

- 14.1 The council or a committee of the council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:
- (a) personnel matters concerning particular individuals (other than councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the council, councillors, council staff or council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
 - (i) alleged contraventions of the council's code of conduct.

Note: Clause 14.1 reflects section 10A(1) and (2) of the Act.

- 14.2 The council or a committee of the council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Note: Clause 14.2 reflects section 10A(3) of the Act.

Matters to be considered when closing meetings to the public

- 14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:
- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
 - (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

Note: Clause 14.3 reflects section 10B(1) of the Act.

- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns

legal matters that:

- (a) are substantial issues relating to a matter in which the council or committee is involved, and
- (b) are clearly identified in the advice,
- (c) are fully discussed in that advice, and
- (d) are subject to legal professional privilege.

Note: Clause 14.4 reflects section 10B(2) of the Act.

- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

Note: Clause 14.5 reflects section 10B(3) of the Act.

- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

- (a) a person may misinterpret or misunderstand the discussion, or
- (b) the discussion of the matter may:
 - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
 - (ii) cause a loss of confidence in the council or committee.

Note: Clause 14.6 reflects section 10B(4) of the Act.

- 14.7 In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must consider any relevant guidelines issued by the Departmental Chief Executive of the Office of Local Government.

Note: Clause 14.7 reflects section 10B(5) of the Act.

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the council, or of a committee of the council, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.19 as a matter that is likely to be considered when the meeting is closed, but only if:
- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
 - (b) the council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

Note: Clause 14.8 reflects section 10C of the Act.

Representations by members of the public

- 14.9 The council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Note: Clause 14.9 reflects section 10A(4) of the Act.

- 14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.
- 14.11 Despite clauses 14.9 and 14.10, the council may resolve to close the meeting to the public in accordance with this Part to hear a representation from a member of the public as to whether the meeting should be closed to consider an item of business where the representation involves the disclosure of information relating to a matter referred to in clause 14.1.
- 14.12 Where the matter has been identified in the agenda of the meeting under clause 3.19 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the council in a manner determined by the council. [Applications must be received by 5pm the day before the meeting at which the matter is to be considered.](#)

Expulsion of non-councillors from meetings closed to the public

- 14.13 If a meeting or part of a meeting of the council or a committee of the council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.14 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using such force as is reasonably necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Note: Failure to comply with a direction to leave a meeting is an offence under section 660 of the Act carrying a maximum penalty of 20 penalty units.

Obligations of councillors attending meetings by audio-visual link

- 14.15 Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

Information to be disclosed in resolutions closing meetings to the public

- 14.16 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:
- (a) the relevant provision of section 10A(2) of the Act,
 - (b) the matter that is to be discussed during the closed part of the meeting,
 - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Note: Clause 14.16 reflects section 10D of the Act.

Resolutions passed at closed meetings to be made public

- 14.17 If the council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting. [Each resolution will require a division and must also be made public.](#)
- 14.18 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.17 during a part of the meeting that is livestreamed where practicable.
- 14.19 The general manager must cause business papers for items of business considered during a meeting, or part of a meeting, that is closed to public, to be published on the council's website as soon as practicable after the information contained in the business papers ceases to be confidential.
- 14.20 The general manager must consult with the council and any other affected persons before publishing information on the council's website under clause 14.19 and provide reasons for why the information has ceased to be confidential.

15 KEEPING ORDER AT MEETINGS

Points of order

- 15.1 A councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

- 15.3 The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- 15.4 A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- 15.5 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.
- 15.6 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

- 15.7 A councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.8 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 15.9 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

- 15.10 A councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council:
- (a) contravenes the Act, the Regulation or this code, or
 - (b) assaults or threatens to assault another councillor or person present at the meeting, or
 - (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 the committee, or addresses or attempts to address the council or the committee on such a motion, amendment or matter, or
 - (d) uses offensive or disorderly words, or
 - (e) makes gestures or otherwise behaves in a way that is sexist, racist, homophobic or otherwise discriminatory, or, if the behaviour occurred in the Legislative Assembly, would be considered disorderly, or
 - (f) imputes improper motives to or unfavourably personally reflects upon any other council official, or a person present at the meeting, except by a motion, or
 - (g) says or does anything that would promote disorder at the meeting or is otherwise inconsistent with maintaining order at the meeting.

Note: Clause 15.10 reflects section 182 of the Regulation.

Note: The Legislative Assembly's Speaker's Guidelines state that "Members are not to use language, make gestures, or behave in any way in the Chamber that is sexist, racist, homophobic or otherwise exclusionary or discriminatory. Such conduct may be considered offensive and disorderly, in accordance with Standing Order 74".

- 15.11 The chairperson may require a councillor:
- (a) to apologise without reservation for an act of disorder referred to in clauses 15.10(a), (b), (d), (e), or (g), or
 - (b) to withdraw a motion or an amendment referred to in clause 15.10(c) and, where appropriate, to apologise without reservation, or
 - (c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in clauses 15.10(d), (e), (f) or (g).

Note: Clause 15.11 reflects section 233 of the Regulation.

- 15.12 A failure to comply with a requirement under clause 15.11 constitutes a fresh act of disorder for the purposes of clause 15.10.

- 15.13 Where a councillor fails to take action in response to a requirement by the chairperson to remedy an act of disorder under clause 15.11 at the meeting at which the act of disorder occurred, the chairperson may require the councillor to take that action at each subsequent meeting until such time as the councillor complies with the requirement. If the councillor fails to remedy the act of disorder at a subsequent meeting, they may be expelled from the meeting under clause 15.18.

How disorder at a meeting may be dealt with

- 15.14 If disorder occurs at a meeting of the council, the chairperson may adjourn the meeting for a period of not more than fifteen (15) minutes and leave the chair. The council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.

Expulsion from meetings

- 15.15 Deleted.
- 15.16 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person other than a councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the council or the committee of the council.
- 15.17 Clause 15.16 does not limit the ability of the council or a committee of the council to resolve to expel a person, including a councillor, from a council or committee meeting, under section 10(2)(a) of the Act.
- 15.18 A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for having failed to comply with a requirement under clause 15.11 or clause 15.13. The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.

Note: Clause 15.18 reflects section 233(2) of the Regulation.

- 15.19 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for engaging in or having engaged in disorderly conduct at the meeting.
- 15.20 Members of the public attending a meeting of the council:
- (a) must remain silent during the meeting unless invited by the chairperson to speak,
 - (b) must not bring flags, signs or protest symbols to the meeting, and
 - (c) must not disrupt the meeting.
- 15.21 Without limiting clause 15.19, a contravention of clause 15.20 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.19. Members of the public may, as provided by section 10(2) of the Act, be expelled from a meeting for a breach of clause 15.20.
- 15.22 Where a councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.

- 15.23 If a councillor or a member of the public fails to leave the place where a meeting of the council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using such force as is reasonably necessary, remove the councillor or member of the public from that place and, if necessary, restrain the councillor or member of the public from re-entering that place for the remainder of the meeting.

Note: Failure to comply with a direction to leave a meeting is an offence under section 660 of the Act carrying a maximum penalty of 20 penalty units.

How disorder by councillors attending meetings by audio-visual link may be dealt with

- 15.24 Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the councillor's audio link to the meeting for the purposes of enforcing compliance with this code.
- 15.25 If a councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the councillor's audio-visual link to the meeting.

Use of mobile phones and the unauthorised recording of meetings

- 15.26 Councillors, council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the council and committees of the council.
- 15.27 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the council or the committee.
- 15.28 Without limiting clause 15.19, a contravention of clause 15.27 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.19. Any person who contravenes or attempts to contravene clause 15.27, may, as provided for under section 10(2) of the Act, be expelled from the meeting.
- 15.29 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using such force as is reasonably necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

Note: Failure to comply with a direction to leave a meeting is an offence under section 660 of the Act carrying a maximum penalty of 20 penalty units.

16 CONFLICTS OF INTEREST

- 16.1 All councillors and, where applicable, all other persons, must declare and manage conflicts of interest they have in matters being considered at meetings of the council and committees of the council in accordance with the council's code of conduct. All declarations of conflicts of interest must be recorded in the minutes of the meeting at which the declaration was made.
- 16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they have in matters being considered at the meeting in accordance with the council's code of conduct. Where a councillor has declared a conflict of interest in a matter being discussed at the meeting, the councillor's audio-visual link to the meeting must be suspended or terminated and the councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the council or committee, or at any time during which the council or committee is voting on the matter.

17 DECISIONS OF THE COUNCIL

Council decisions

- 17.1 A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

Note: Clause 17.1 reflects section 371 of the Act in the case of councils and section 400T(8) in the case of joint organisations.

- 17.2 Decisions made by the council must be accurately recorded in the minutes of the meeting at which the decision is made.

Rescinding or altering council decisions

- 17.3 A resolution passed by the council may not be altered or rescinded except by a motion to that effect of which notice has been given in accordance with this code.

Note: Clause 17.3 reflects section 372(1) of the Act.

- 17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

Note: Clause 17.4 reflects section 372(2) of the Act.

- 17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with this code.

Note: Clause 17.5 reflects section 372(3) of the Act.

- 17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

Note: Clause 17.6 reflects section 372(4) of the Act.

- 17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

Note: Clause 17.7 reflects section 372(5) of the Act.

- 17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

Note: Clause 17.8 reflects section 372(7) of the Act.

- 17.9 A notice of motion submitted in accordance with clause 17.6 may only be

withdrawn under clause 3.11 with the consent of all signatories to the notice of motion.

- 17.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the general manager no later than 5pm on the day after the meeting at which the resolution was adopted.
- 17.11 A motion to alter or rescind a resolution of the council may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

Note: Clause 17.11 reflects section 372(6) of the Act.

17.12 DELETED

17.13 DELETED

17.14 DELETED

Recommitting resolutions to correct an error

- 17.15 Despite the provisions of this Part, a councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:
- (a) to correct any error, ambiguity or imprecision in the council's resolution, or
 - (b) to confirm the voting on the resolution.
- 17.16 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.15(a), the councillor is to propose alternative wording for the resolution.
- 17.17 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.15(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.
- 17.18 A motion moved under clause 17.15 can be moved without notice. Despite any other provision of this code, only the mover of a motion referred to in clause 17.15 and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.
- 17.19 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.15.
- 17.20 A motion moved under clause 17.15 with the leave of the chairperson cannot be voted on unless or until it has been seconded.

18 TIME LIMITS ON COUNCIL MEETINGS

- 18.1 Meetings of the council and committees of the council are to conclude **no later than 9pm**. If the business of the meeting is unfinished at **9pm**, the council or the committee may, by resolution, extend the time of the meeting by 30 minutes.
- 18.2 If the business of the meeting is unfinished at the time the council has determined, and the council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the council, or
 - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.3 Clause 18.2 does not limit the ability of the council or a committee of the council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.4 Where a meeting is adjourned under clause 18.2 or 18.3, the general manager must:
- (a) individually notify each councillor of the time, date and place at which the meeting will reconvene, and
 - (b) publish the time, date and place at which the meeting will reconvene on the council's website and in such other manner that the general manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

19 AFTER THE MEETING

Minutes of meetings

- 19.1 The council is to keep full and accurate minutes of the proceedings of meetings of the council.

Note: Clause 19.1 reflects section 375(1) of the Act.

- 19.2 At a minimum, the general manager must ensure that the following matters are recorded in the council's minutes:

- (a) the names of councillors attending a council meeting and whether they attended the meeting in person or by audio-visual link,
- (b) details of each motion moved at a council meeting and of any amendments moved to it,
- (c) the names of the mover and seconder of the motion or amendment,
- (d) whether the motion or amendment was passed or lost, and
- (e) such other matters specifically required under this code.

- 19.3 The minutes of a council meeting must be confirmed at a subsequent meeting of the council.

Note: Clause 19.3 reflects section 375(2) of the Act.

- 19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

- 19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

Note: Clause 19.5 reflects section 375(2) of the Act.

- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

- 19.7 The confirmed minutes of a council meeting must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The council and committees of the council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

Note: Clause 19.8 reflects section 11(1) of the Act.

- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

Note: Clause 19.9 reflects section 11(2) of the Act.

- 19.10 Clause 19.8 does not apply if the council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

Note: Clause 19.10 reflects section 11(3) of the Act.

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the council

- 19.12 The general manager is to implement, without undue delay, lawful decisions of the council.

Note: Clause 19.12 reflects section 335(b) of the Act.

20 COUNCIL COMMITTEES

Application of this Part

20.1 This Part only applies to committees of the council whose members are all councillors.

Council committees whose members are all councillors

20.2 The council may, by resolution, establish such committees as it considers necessary.

20.3 A committee of the council is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.

20.4 The quorum for a meeting of a committee of the council is to be:

- (a) such number of members as the council decides, or
- (b) if the council has not decided a number – a majority of the members of the committee.

Functions of committees

20.5 The council must specify the functions of each of its committees when the committee is established but may from time to time amend those functions.

Notice of committee meetings

20.6 The general manager must send to each councillor, regardless of whether they are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:

- (a) the time, date and place of the meeting, and
- (b) the business proposed to be considered at the meeting.

20.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

Non-members entitled to attend committee meetings

20.8 A councillor who is not a member of a committee of the council is entitled to attend, and to speak at a meeting of the committee. However, the councillor is not entitled:

- (a) to give notice of business for inclusion in the agenda for the meeting, or
- (b) to move or second a motion at the meeting, or
- (c) to vote at the meeting.

Chairperson and deputy chairperson of council committees

- 20.9 The chairperson of each committee of the council must be:
- (a) the mayor, or
 - (b) if the mayor does not wish to be the chairperson of a committee, a member of the committee elected by the council, or
 - (c) if the council does not elect such a member, a member of the committee elected by the committee.
- 20.10 The council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.11 If neither the chairperson nor the deputy chairperson of a committee of the council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- 20.12 The chairperson is to preside at a meeting of a committee of the council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting. If neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

- 20.13 Subject to any specific requirements of this code, each committee of the council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the council.
- 20.14 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the council or the committee determines otherwise in accordance with clause 20.13.
- 20.15 Deleted
- 20.16 Voting at a council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Mayoral minutes

- 20.17 The provisions of this code relating to mayoral minutes also apply to meetings of committees of the council in the same way they apply to meetings of the council.

Closure of committee meetings to the public

- 20.18 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the council to the public in the same way they apply to the closure of meetings of the council to the public.
- 20.19 If a committee of the council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended and report the resolution or recommendation to the next meeting of the council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.
- 20.20 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.19 during a part of the meeting that is livestreamed where practicable.
- 20.21 The general manager must cause business papers for items of business considered during a meeting, or part of a meeting, that is closed to public, to be published on the council's website as soon as practicable after the information contained in the business papers ceases to be confidential.
- 20.22 The general manager must consult with the committee and any other affected persons before publishing information on the council's website under clause 20.21 and provide reasons for why the information has ceased to be confidential.

Disorder in committee meetings

- 20.23 The provisions of the Act, the Regulation, and this code relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way they apply to meetings of the council.

Minutes of council committee meetings

- 20.24 Each committee of the council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:
- (a) the names of councillors attending a meeting and whether they attended the meeting in person or by audio-visual link,
 - (b) details of each motion moved at a meeting and of any amendments moved to it,
 - (c) the names of the mover and seconder of the motion or amendment,
 - (d) whether the motion or amendment was passed or lost, and
 - (e) such other matters specifically required under this code.
- 20.25 DELETED
- 20.26 The minutes of meetings of each committee of the council must be confirmed at a subsequent meeting of the committee.

- 20.27 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 20.28 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.
- 20.29 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 20.30 The confirmed minutes of a meeting of a committee of the council must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of meetings of committees of the council on its website prior to their confirmation.

21 IRREGULARITIES

21.1 Proceedings at a meeting of a council or a council committee are not invalidated because of:

- (a) a vacancy in a civic office, or
- (b) a failure to give notice of the meeting to any councillor or committee member, or
- (c) any defect in the election or appointment of a councillor or committee member, or
- (d) a failure of a councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct, or
- (e) a failure to comply with this code.

Note: Clause 21.1 reflects section 374 of the Act.

22 DEFINITIONS

the Act	means the <i>Local Government Act 1993</i>
act of disorder	means an act of disorder as defined in clause 15.10 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion
audio recorder	any device capable of recording speech
audio-visual link	means a facility that enables audio and visual communication between persons at different places
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
chairperson	in relation to a meeting of the council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.9 of this code
this code	means the council’s adopted code of meeting practice
committee of the council	means a committee established by the council in accordance with clause 20.2 of this code (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 12.1
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and any other person exercising functions on behalf of the council
day	means calendar day
division	means a request by two councillors under clause 11.7 of this code requiring the recording of the names of the councillors who voted both for and against a motion
livestream	a video broadcast of a meeting transmitted across the internet concurrently with the meeting
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
planning decision	means a decision made in the exercise of a function of a council under the <i>Environmental Planning and Assessment Act 1979</i> including any decision relating to a development application, an environmental planning instrument, a development control plan, a planning agreement or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
performance improvement order	means an order issued under section 438A of the Act
quorum	means the minimum number of councillors or committee members necessary to conduct a meeting
the Regulation	means the <i>Local Government (General) Regulation 2021</i>
year	means the period beginning 1 July and ending the following 30 June

END

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	13/08/2001	371
	15/04/2004	104
	08/08/2005	05/225
	10/10/2005	05/280
	14/05/2007	07/094
	08/12/2008	08/333
	14/12/2009	0912/006
	14/03/2011	1103/006
	12/11/2012	1211/014
	13/07/2015	1507/010
	17/09/2018	1809/010
	20/05/2019	1905/010
	19/10/2020	2010/008
Remote Attendance Guideline	17/05/2021	2105/007
Remote Attendance Guideline updated	29/06/2021	2106/003
	15/08/2022	2208/005
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Section 3.1 updated	22/10/2024	2410/006
	26/08/2025	2506/011
	XX/XX/2025	
Next Review:	26/03/2029	



Artificial Intelligence (AI) Usage Policy

Policy	
Officer Responsible	Manager Information Technology
Last Review Date	XX/XX/XXXX

Strategic Policy

1. Purpose

Blayney Shire Council is committed to the safe, ethical and transparent use of Artificial Intelligence (AI) to improve service delivery, decision-making and operational efficiency. This policy establishes the strategic framework for governing AI use across Council, ensuring privacy, security, accountability and public trust.

2. Scope

This policy applies to all Councillors, employees and contractors using AI technologies for any Council-related purpose. It covers all AI systems, including generative AI, whether licensed, embedded in existing platforms, or publicly available.

3. Strategic Principles

Council's use of AI must align with NSW Government AI Strategy, Cyber Security Policy, and ethical standards. All AI activity must reflect the following principles:

- Transparency – AI use must be declared when it influences decisions, communications or outputs.
- Accountability & Human Oversight – Humans remain responsible for all decisions. AI must support, not replace, human judgement.
- Privacy & Security – Sensitive, personal or confidential information must never be entered into public AI tools.
- Fairness & Non-Discrimination – AI must avoid bias, harmful impacts or inequitable outcomes.
- Explainability – AI processes and outputs must be understandable, reviewable and auditable.

4. Governance & Responsibilities

General Manager – Endorse and oversee AI governance, culture, risk management and compliance.

Manager Information Technology – Lead implementation of this policy, maintain the AI Register, assess AI risks, and ensure technical safeguards, security controls and monitoring.

Directors and Managers – Own business use cases, ensure appropriate human oversight, and ensure staff compliance.

Staff and Councillors – Use only approved AI tools, comply with this policy, complete required training and report misuse or incidents.

Contractors – Must meet Council's security, privacy, ethical and contractual requirements.

5. Strategic Use of AI

Council supports the responsible use of AI to:

- Improve efficiency in service delivery
- Enhance communication and customer experience

- Support data analysis and internal operations
- Assist with drafting and summarising non-sensitive content

AI must not be used to make autonomous decisions that impact individuals, finances, compliance obligations or statutory responsibilities.

6. Approved AI Technologies

- Council may approve licensed AI tools that meet security, privacy and data protection standards.
- Public AI tools may only be used with prior approval and must not process confidential or personal information.
- Staff with existing paid AI subscriptions may use them for work only with General Manager approval.

7. Information & Data Controls

Permitted inputs include:

- Public information
- Unofficial or non-sensitive Official information
- De-identified content with minimal re-identification risk

Prohibited inputs include:

- Personal information
- Confidential or privileged material
- Internal operational or security information
- Any "Official: Sensitive" or higher-classified data

Refer to the AI Procedure for more comprehensive requirements and operational steps relating to data controls.

8. AI Use Approval

Any new AI use case, pilot or trial must be approved prior to use. Assessments consider data sensitivity, privacy impact, ethical risk, vendor security and human oversight requirements.

9. Security, Audit & Monitoring

Council will monitor AI usage to protect information security and ensure compliance, including:

- Activity logging
- Network and endpoint monitoring
- Restrictions on model training and prompt retention
- Ongoing risk review

10. Training & Awareness

All staff and Councillors must complete AI awareness training before accessing Council-approved AI tools.

11. Recordkeeping

AI-generated content used for Council business is a state record and must be saved to the Enterprise Content Management System with metadata noting AI involvement.

12. Related Documents

- Information Technology Security & Usage Policy
- Privacy Management Plan
- Code of Conduct
- NSW Artificial Intelligence Ethics Policy
- State Records Act 1998
- Privacy and Personal Information Protection Act 1998



Pensioner and Hardship Assistance Policy

Policy	5E
Officer Responsible	Chief Financial Officer
Last Review Date	XX/XX/2025

Strategic Policy

Objectives

To provide a framework in response to applications from property owners, ratepayers and customers experiencing genuine hardship in meeting their commitment to payment of their rates, annual charges and fees to Council.

Policy Statement

1. Council recognises that ratepayers may experience financial hardship in some circumstances in paying rates, annual charges, and fees. The Local Government Act 1993 (the Act) provides for the following assistance to ratepayers and customers:
 - Periodical payment arrangements for overdue rates and charges [s.564];
 - Writing off or reducing interest accrued on rates or charges [s.564 & 567];
 - Waiving, reducing or deferring the payment of the increase in the amount of rate payable because of hardship resulting from general revaluation of land in the Local Government Area [s.601];
 - Waiving, or reducing rates, charges and interest of eligible pensioners [s. 575, 582]
 - Waiving or reducing Council fees when the inability to pay is due to hardship [s.610E]
2. Council will consider each application for assistance on its own merits. A ratepayer may be eligible for consideration for Hardship Assistance in the payment of overdue rates, annual charges, interest, and fees, where:
 - the person is unable to pay due rates, charges fees or accrued interest when due and payable for reasons beyond the persons' control; or
 - payment when due would cause the person hardship.
3. In determining eligibility Council require the request to be made in writing to the General Manager, providing reasonable proof of financial hardship. Council may also request details of assets, income and living expenses, and such other information required to make a valid assessment. Council may also request that the ratepayer attend an interview to assist Council in the understanding of the issues causing hardship.
4. The criteria for assessment will be, but is not limited to
 - the amount of any rate increase when compared to the average rate increase for the rate category,
 - income from all sources,
 - living expenses,
 - reason for financial hardship,
 - length of occupancy.

Assistance to Eligible Pensioners

1. Council will provide a rebate of rates to eligible pensioners who are granted a mandatory pensioner concession under s.575 of "the Act".
2. Council will provide assistance to eligible pensioners who are experiencing financial difficulties, by offering alternative payment arrangements and reasonable extension to payment timetables. All payment arrangements must:
 - a. pay the balance owing within a reasonable timeframe;
 - b. not exceed~~ing~~ two years from the date of the arrangement being made; and
 - c. include future rates and charges which will be levied during the arrangement period.
3. In order to avoid hardship under s.577 of "the Act", Council may extend the pensioner concession to ratepayers who jointly occupy a dwelling and are jointly liable for rates and charges with an eligible pensioner, if it considers proper to do so.

Backdating of Pensioner Rebates

1. Backdating of pensioner rebate claims pursuant to s.579 of "the Act" is limited to one (1) previous rating year only, or part thereof.
2. Backdating is only to occur where adequate substantiation can be provided to satisfy the essential criteria of the granting of a rates and charges pensioner concession.
3. Claims made beyond one (1) previous rating year must be requested in writing and be referred to Council.

Hardship Assistance by Periodical Payment Arrangements

1. Council may enter into a formal agreement with a ratepayer eligible for alternative periodical payment arrangements for due and payable rates, and charges. Council or the ratepayer may initiate a proposal for a periodical payment agreement. In accordance with s.568 of "the Act", payments will be applied towards the payment of rates and charges in the order in which they became due. Council will provide information on the amounts due and payable on relevant notices.
2. Council may also write off or reduce the accrued interest and costs on rates and charges if the person complies with the periodical agreement (s.542(2)). If the ratepayer fails to make the periodical payment in accordance with the agreement, the payment plan may be cancelled. Full payment of the amount outstanding will be due immediately.

Hardship Assistance by Writing off Accrued Interest and Costs

Council applies interest rates to the maximum allowable under s.566 of “the Act”. However, Council may write off accrued interest and costs on rates or charges payable by a person under s.567 of “the Act” and the Local Government (General) Regulation ~~2005~~ where:

- the person was unable to pay the rates or charges when they became due for reasons beyond the person's control, or
- the person is unable to pay accrued interest for reasons beyond the person's control, or
- payment of the accrued interest would cause the person hardship.

Hardship Assistance Due to Certain Valuation Changes

Under s.601 of “the Act”, any ratepayer who incurs a rate increase following a new valuation of land values may apply to Council for rate relief, if the new rate payable causes the ratepayer to suffer substantial hardship. ~~[Section 601 (1)]~~

Council will encourage aggrieved ratepayers to make an appropriate application under the appeal provisions of the NSW Valuation of Land Act ~~1916~~. Council may provide assistance, by offering alternative payment arrangements and reasonable extension to payment timetables.

All payment arrangements must:

1. pay the balance owing within a reasonable timeframe;
2. not exceed two years from the date of the arrangement being made; and
3. include future rates and charges which will be levied during the arrangement period.

Hardship Assistance Due to Impact of Special Rate Variations

Any ratepayer who incurs a rate increase resulting from the implementation of a special rates variation can apply to Council for Hardship Assistance if the increase in the amount of rates payable would cause them substantial hardship.

Writing off of Rates, Charges and Interest

In the cases where Council determines to write off rates, charges or interest, the General Manager shall write off debts to the maximum amount allowable under Council delegation. Any amount above that may only be approved by a Council resolution.

Privacy and Confidentiality

Council Officers will conduct themselves with courtesy and respect when dealing with ratepayers and shall maintain the privacy and confidentiality of all ratepayers' personal circumstances.

End of Policy

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Privacy Management Plan

Policy	11C
Officer Responsible	Director Corporate Services
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Strategic Policy

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PREFACE

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.

OBJECTIVE

To ensure Council information is used in accordance with the principles of open and transparent government, within the parameters of confidentiality and the Privacy and Personal Information Act, 1998.

PART 1 – INTRODUCTION

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

Section 33 of the PPIPA requires all councils to prepare a Privacy Management Plan (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.

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 Code of Practice for Local Government.

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.

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 Policy on Electoral Rolls

~~The Electoral Roll is a publicly available publication. Council will provide open access to the Electoral Roll in Council's library.~~ Council will refer any requests for copies of the Electoral Roll to the State Electoral Commissioner.

1.4 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.

1.5 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).

1.6 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.

1.7 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. 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 Council holds the following public registers under the LGA: ***

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

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

Council holds the following public registers under the Environmental Planning and Assessment Act:

- ~~Section 100 – Register of consents and approvals~~
- Section ~~149G 4.58~~ – ~~Register of consents and~~Record of building certificates

Council holds the following public register under the Protection of the Environment (Operations) Act:

- Section 308 – Public register of licences held

Council holds the following public register under the Impounding Act 1993:

- Section 30 & 31 – Record of impounding

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

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 a guide)

Councils also need 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.
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~~ 4.58 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 unless otherwise prescribed.

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”.

2.5 Purposes of public registers

Purposes of public registers under the Local Government Act

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

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

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

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

Purposes of public registers under the Environmental Planning and Assessment Act

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

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

Purposes of public registers under the Protection of the Environment (Operations) Act

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

Purposes of the public register under the Impounding Act

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

Secondary purpose of all Public Registers

Due to the general emphasis (to be found in the 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 should be 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.

2.6 Applications for access to own records on a public register

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

2.7 Applications for suppression in relation to a public register

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

A person about whom personal information is contained (or proposed to be contained) in a public register, may request 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.

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.

2.8 Other registers

Council may have other registers that are not public registers. The Information Protection Principles, this Plan, any applicable Codes and the PPIPA apply to those registers or databases.

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.*

The Privacy Code of Practice for Local Government

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

Council Policy

Council will only collect personal information for a lawful purpose as part of its proper functions. The LGA governs Council's major obligations and functions.

Section 22 of the LGA provides other functions under other Acts. Whilst not exhaustive, Some some of those Acts are as follows:

- Community Land Development Act 2021
- Companion Animals Act 1998**
- Conveyancing Act 1919
- Environmental Planning and Assessment Act 1979
- Fire and Rescue Act 1989
- Fluoridation of Public Water Supplies Act 1957
- Food Act 2003
- ~~Impounding Public Spaces (Unattended Property) Act 1993~~2021
- Library Act 1939
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Recreation Vehicles Act 1983
- Roads Act 1993
- Rural Fires Act 1997
- State Emergency Service Act 1989
- Strata Schemes Development Act 2015
- Strata Schemes Management Act 2015;
- Swimming Pools Act 1992

~~This list is not exhaustive.~~

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

- Coastal Management Act ~~2004~~2016;
- Government Information (Public Access) Act 2009;
- Heritage Act 1977;
- State Emergency and Rescue Management Act 1989;
- Unclaimed Money Act 1995.

The circumstances under which Council may collect information, including personal information, are varied and numerous.

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

Anyone engaged by Council as a private contractor or consultant that involves the collection of personal information must 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 Director General's 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 Contact Officer will also provide advice as to:

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

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

The Code makes provision for Council to depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be conferred upon the person to whom the information relates.

Council Policy

The compilation or referral of registers and rolls are the major means by which the Council collects personal information. For example, the information the Council receives from the Land Titles Office would fit within section 9(a) above.

Other means include forms that customers may complete and lodge with Council for development consent, companion animal registration, applications for specific inspections or certifications or applications in respect of tree preservation orders.

In relation to petitions, the Council will treat the personal information contained in petitions in accordance with PPIPA.

Where Council or a Councillor requests or requires information from individuals or groups, that information will be treated in accordance with PPIPA.

Council regards all information concerning its customers as information protected by PPIPA. Council will therefore collect all personal information directly from its customers except as provided in section 9 or under other statutory exemptions or Codes of Practice. Council may collect personal information from other public sector agencies in respect of specific statutory obligations where it is authorised by law to do so.

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.

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
- (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 Land Titles Office.)
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

The Code makes provision for Council to depart from this principle where personal information is collected about an individual for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition without prior or subsequent notification.

Council Policy

Where Council 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.

Council will inform persons if the information is required by law or voluntarily given. Council will also inform individuals which department or section within Council holds their personal information, and of the right to access and correct that information. Council will adapt the general section 10 pre-collection Privacy Notification form as appropriate (See Appendix 2).

The following are examples of application procedures that will require a Privacy Notification Form in accordance with section 10:

- Lodging Development Applications;
- Lodging objections to Development Applications;
- Lodging applications for approval under the LGA;
- Any stamps or printed slips that contain the appropriate wording for notification under section 10 (see Appendix 2); and
- When collecting an impounded item.

In relation to the Privacy Notification Form 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.

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 including a privacy notification form in the next issue of their rates notice, or otherwise by letter. A common example of the collection of information from another public sector agency is the Land Titles Office. Council receives information as to new ownership changes when property is transferred from one owner to the next. Appendix 3 contains a sample Privacy Notification Form that could be used for post-collection.

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.

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:

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

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Council will seek to ensure that no personal information is collected which is not directly relevant to its proper functions.

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.

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:

- (i) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and*
- (j) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and*
- (k) 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*
- (l) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.*

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Council may comply with this principle by using any or all of the following or similar documents:

- Records and Archives Services Manual;
- The Council's Policy on Security of and Access to Misconduct Files;
- Council's Internet Security Policy;
- Information Technology Security Policy; and
- General Records Disposal Schedule for Local Government.

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:

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

The Privacy Code of Practice for Local Government

The Code makes no provision to depart from this principle.

Council Policy

Section 13 of the PPIPA requires 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.

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.

Any person can make application to Council by completing the appropriate form and submitting it to Council. An example is at Appendix 4.

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.

Council will ordinarily provide a response to applications of this kind within 28 days of the application being made. The fee structure is commensurate to that of the Council's GIPA Act rates structure.

Investigative Functions

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

Existing exemptions under the Act

Compliance with Information Protection Principle 6 is also subject to certain exemptions under the Act. If one of those exemptions 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

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

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

The Code makes no provision to depart from this principle.

Council Policy

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.

Compliance with Information Protection Principle 7 does not allow disclosure of information about other people. If access to information that relates to someone else is sought, the application must be made under the GIPA Act, unless Information Protection Principles 11 and 12 or the Public Register provisions apply.

Where 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.

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.

Customers wishing to exercise their right of access to their own personal information should apply in writing or direct their inquiries to the General Manager, who will make a determination. A sample form is provided at Appendix 5.

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 Manager of Personnel, who will deal with the application.

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 28 days of the application being made.

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

The Code makes no provision to depart from this principle.

Council Policy

Section 15 of the PPIPA allows a person to make an application to 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.

Council wishes to have its information current, accurate and complete. Proposed amendments or changes to the personal information held by the Council are welcomed.

If Council declines to amend personal information as requested, it will on request of the individual concerned, place an addendum on the information in accordance with section 15(2) of the PPIPA.

Where there are complaints that are or could be the subject of a staff complaint or grievance, they will be referred to the Manager Personnel in the first instance and treated in accordance with the "Grievance and Complaint Handling Procedures".

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.

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. 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.

The Council's application form for alteration under IPP 8 is at Appendix 6 at the end of this Plan.

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.

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

The Code makes no provision to depart from this principle. Council

Policy

The steps taken to comply with section 16 will depend on the age of the information, its likelihood of change and the particular function for which the information was collected.

The more significant the information, the greater the necessity that checks to ensure its accuracy and currency be undertaken prior to its use.

For example, each employee's record should be updated when there is any change of circumstances or when the employee's contact details change.

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

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

- (i) where the use is in pursuance of Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s; or
- (ii) where personal information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of personal recognition.

Explanatory Note

Council may use personal information obtained for one purpose for another purpose in pursuance of its lawful and proper functions. 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.

Council Policy

Council will seek to ensure that information collected for one purpose will be used for that same purpose. Where Council may need to use personal information collected for one purpose for another purpose, it will first gain the consent of the individual concerned, unless an exemption applies.

External and related bodies

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

- Council 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 (1) _____	(1) insert full name
of (2) _____	(2) insert address
hereby consent under section 17(a) of the Privacy and Personal Information Protection Act 1998 to (3): _____	(3) insert Council name
using the information collected from me by (4): _____	(4) insert name of collecting body/person
for the purpose of (5): _____	(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 Department 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

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

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

Council Policy

Council will not disclose the information to another person or other body, unless the disclosure is directly related to the purpose for which the information was collected or where the Council has no reason to believe that the individual concerned would object to the disclosure.

Council may disclose personal information to another person or other body where this disclosure is directly related to the purpose for which the personal information was collected and the individual concerned is reasonably likely to have been aware, (or has been made aware in accordance with section 10), of the intended recipients of that information. "Directly related" can mean the disclosure to another person or agency to deliver a service which supplements that of Council or disclosure to a consultant for the purpose of assessing or reviewing the delivery of a program to which the original collection relates.

The council may disclose personal information to another person or other body where this disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

Public Registers

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

Investigative Functions

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

Existing exemptions under the Act

Compliance with Information Protection Principle 11 is also subject to certain exemptions under the Act. If one of those exemptions 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.

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

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

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 work, and the position occupied during that time. This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

Council Policy

Council will not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

Public Registers

Sections 19 and 57 of the PPIPA should be read in conjunction in regard to Public Registers. Public Registers are discussed further in Part 2 of this Plan.

Investigative Functions

Where Council is conducting an investigation, it will have regard to any applicable Direction of the Privacy Commissioner under section 41 of the PPIPA that may affect the application of Information Protection Principle 12.

Existing exemptions under the Act

Compliance with Information Protection Principle 12 is also subject to certain exemptions under the Act. If one of those exemptions 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, childcare 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;
- 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.*

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.*

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.*
- (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 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 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 5).

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*
 - (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).

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:*
- (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.*

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.

- (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).*

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) *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 individual of the amendment sought.*

- (3) *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.

- (4) *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 (HPP 7).

Council will allow the individual to update, correct or amend his or her health information where necessary (HPP 8).

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

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*
- (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
- (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).

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**
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*
 - (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*
- (j) *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*
- (k) **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
- (l) **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
- (m) **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.*
- (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:*
 - (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).

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: the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles for fair handling of the information that are substantially similar to the Health Privacy Principles, or

- (a) the individual consents to the transfer, or*
- (b) 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*
- (c) 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*
- (d) 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*
- (e) 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*
- (f) 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*
- (g) the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.*

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.

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

Councillors, all staff of the Council including staff of council businesses, and members of council committees should be acquainted with the general provisions of the 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.

5.2 Responsibilities of the Privacy Contact Officer

It is assumed that the Public Officer within Council will be assigned the role of the Privacy Contact Officer unless the General Manager has directed otherwise.

In order to ensure compliance with PPIPA and the HRIPA, the Privacy Contact Officer 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.

Interim measures to ensure compliance with IPP 3 in particular may include the creation of stamps or printed slips that contain the appropriate wording (see Appendices 2 and 3).

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 Office of the Privacy Commissioner NSW.

PART 6 – INTERNAL REVIEW

6.1 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.

The 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 the council is required to consider any relevant material submitted by the Privacy Commissioner. The 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 may provide a copy of any submission by Privacy Commissioner's to the applicant.

The 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.

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.

6.2 What happens after an Internal Review?

If the complainant remains unsatisfied, he/she may appeal to the Administrative Decisions Tribunal 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.

PART 7 – OTHER RELEVANT MATTERS

7.1 Contracts with consultants and other private contractors

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

7.2 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.

7.3 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.

7.4 Regular review of the collection, storage and use of personal or health information

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

7.5 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.

7.6 Further information

For assistance in understanding the processes under the PPIPA and HRIPA, please contact the Council or the Office of the Privacy Commissioner NSW.

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, Ninth Schedule

I, the undersigned ⁽¹⁾ (1) insert full name

of ⁽²⁾ (2) insert address

in the State of New South Wales, do solemnly and sincerely declare that:

I am ⁽³⁾ (3) insert relationship, if any, to person inquired about

I seek to know whether ⁽⁴⁾ (4) insert name

is on the public register of ⁽⁵⁾ (5) Applicant to describe the relevant public public register

The purpose for which I seek this information is ⁽⁶⁾ (6) insert purpose for seeking information

.....

The purpose for which the information is required is to ⁽⁷⁾ (7) insert purpose

.....

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oats Act 1994.

Signature of Applicant

Declared at: _____

in the said State this _____ day of _____ 20 _____

before me. _____

Signature of Justice of the Peace/Solicitor

Name of Justice of the Peace/Solicitor to be printed

Appendix 4: Application under Section 13 of the Privacy and Personal Information Protection Act 1998: To determine whether Council holds personal information about a person.

Personal information held by the Council

I, ⁽¹⁾ _____ (1) insert full name
of ⁽²⁾ _____ (2) insert address
Hereby request the General Manager of ⁽³⁾ _____ (3) insert name of Council

provide the following:

• Does the Council hold personal information about me? Yes No

• If so, what is the nature of that information? _____

• What is the main purpose for holding the information? _____

• Am I entitled to access the information? Yes No

My address for response to this application is:

_____ State: _____ Post Code: _____

Note to applicants

Council **will not** record your address or any other contact details that you provide for any other purpose other than to respond to your application.

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (PPIPA). There is a separate application form to gain access.

The Council may refuse to process this application in part or in whole if:

- there is an exemption to section 13 of the PPIPA; or
- a Code of Practice may restrict the operation of section 14.

Enquiries concerning this matter can be addressed to:

Appendix 5: Application under section 14 of the Privacy And Personal Information Protection Act 1998: For access to Applicant's Personal Information

Personal information held by the Council

I, ⁽¹⁾ _____ (1) insert full name
of ⁽²⁾ _____ (2) insert address
Hereby request that the ⁽³⁾ _____ (3) insert name of Council

Provide me with:

- (a) access to all personal information held concerning myself; or
- (b) access to the following personal information only (LIST INFORMATION REQUIRED BELOW):

My address for response to this application is:

State: _____ Post Code: _____

Note to applicants

As an applicant, you have a right of access to personal information concerning yourself that is held by the Council under section 14 of the Privacy and Personal Information Protection Act 1998 (PPIPA).

You are entitled to have access without excessive delay or cost.

Council may refuse to process your application in part, or in whole, if:

- the correct amount of fees has not been paid;
- there is an exemption to section 14 of the PPIPA; or
- a Code of Practice may restrict disclosure.

Enquiries concerning this matter can be addressed to:

Appendix 6: Application under section 15 of the Privacy and Personal Information Protection Act 1998: For alteration of Applicant's Personal Information

Personal information held by the Council

I, ⁽¹⁾ _____ (1) insert full name
of ⁽²⁾ _____ (2) insert address
Hereby request that the ⁽³⁾ _____ (3) insert name of Council

alter personal information regarding myself in the following manner:

- I propose the following changes: _____
- The reasons for the changes are as follows: _____
- The documentary bases for those changes is as shown on the attached documents

Note to Applicants :

You have a right to request appropriate amendments are made (whether by way of corrections, deletions or additions) to ensure that the personal information held by the Council:

- (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.

If Council is not prepared to amend the personal information in accordance with a request by you, Council must 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 you.

If your personal information is amended, you are entitled under the Privacy and Personal Information Protection Act 1998 (PPIPA), if it is reasonably practicable, to the have recipients of that information notified of the amendments made by Council.

Council may refuse to process your application in part, or in whole, if:

- there is an exemption to section 15 of the PPIPA; or
- a Code of Practice may restrict alteration.

Enquiries concerning this matter can be addressed to: _____

End of Policy

	Date	Minute
Adopted:	14/08/2000	452
Last Reviewed:	09/07/2007	07/145
	12/11/2012	1211/014
	08/04/2013	1304/005
	21/05/2018	1805/014
	21/11/2022	2211/010
	XX/XX/2026	
Next Review:	20/11/2029	



Road Hierarchy, Renewal and Maintenance Policy

Policy	25G
Officer Responsible	Director Infrastructure Services
Last Review Date	XX/XX/2026

Strategic Policy

OBJECTIVES

To ensure that roads are maintained in compliance with relevant legislative requirements.

To ensure that local and regional road maintenance is undertaken within the financial constraints and competing interests placed on Council, and in accordance with the limit of funds available as determined in Council's Transportation Asset Management Plan and Long Term Financial Plan.

To provide clear information on the level of service that Council will provide to maintain roads defined within the Road Hierarchy, and the physical point at which Council ceases to maintain roads.

To establish procedures that provide a simple, systematic and readily usable risk management approach to the maintenance of public roads to minimise potential hazards to road users resulting in public liability claims or injuries.

DEFINITIONS

“Crown Road” means a public road that is declared to be a crown road for the purposes of the Roads Act 1993.

“Public road” means:

- a) any road that is opened or dedicated as a public road, whether under the Roads Act 1993 or any other Act or law,
- b) any road that is declared to be a public road for the purposes of the Roads Act 1993, and
- c) any road that complies with Clause 701 of the Local Government Act, 1993.

“Regional roads” are roads defined by the state as performing a function between that of State road and a local road and provide for travel between smaller towns and districts and perform a sub-arterial function within major urban centres. They receive part funding by the State Government.

“road” includes:

- a) the airspace above the surface of the road, and
- b) the soil beneath the surface of the road, and
- c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road.

“carry out road work” includes carry out any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a road work.

“Asset Register” refers to Council's financial register of all fixed assets, including all road related infrastructure.

SCOPE

The Policy outlines Council's level of service for road renewal and maintenance activities and details procedures for the management of the road network, road related infrastructure and activities. In particular, the Policy covers the following areas:

- Road hierarchy,
- Renewal standards,
- Road maintenance and maintenance limits, and
- Acceptance of roads to the financial Road Asset Register.

Other objectives consistent with this policy include:

- Advocating for and facilitating the maintenance and improvement of roads and related infrastructure that are the responsibility of NSW Government agencies,
- Providing access throughout the Shire to facilitate the provision of assistance in times of emergency,
- Protecting and maintaining roadside vegetation and the control of non-native species, particularly noxious weeds in accordance with Blayney Shire Council's Roadside Vegetation Management Plan,
- Minimising any adverse environmental impacts of roads,
- Contribute to effective fire control,
- Providing for the grazing of livestock on rural roads in accordance with the Local Land Services Act 2013 and Roads Act 1993, and
- Treat ratepayers equitably in the allocation of maintenance services.

Road Hierarchy:

Council uses a 6 level road hierarchy based on the Local Government Functional Road Classification (Institute of Public Works Engineering Australasia), which determines the road class based on:

- Regional Road classification,
- Function within the road network,
- Typical traffic volumes,
- Number of heavy vehicles,
- School bus routes, and
- Level of connectivity it provides.

The road classes are shown in Table 1 below.

Under the *Roads Act 1993 (NSW)*, Council is the roads authority for public roads within its local government area. However, Council's responsibility to maintain a road only extends to those roads that are formed and open for public use. There is no statutory obligation for Council to construct or maintain unformed or "paper" road reserves. Any unformed or "paper" roads do not fall within Council's road hierarchy and Council will not accept any maintenance responsibilities.

Renewal Standards:

Council has a set of target renewal standards for each road class. These apply to sealed roads, as it is unlikely Council will renew an unsealed road, other than through the maintenance program.

Table 1:

Road Hierarchy – Target Renewal Standards						
Class	Description	Road Seal Standard			Line Marking	
		Seal Width (m)	Lane Width (m)	Shoulder Width (m)	Centre Line	Fog Line
1	Main Arterial	9.0	3.5	1.0	Yes	Yes
2	Shire Arterial	8.0	3.5	0.5	Yes	Yes
3	Main Collector	7.5	3.25	0.5	Yes	As Req.
4	Collector	7.0	3.0	0.5	As Req.	No
5	Access	6.0	3.0	None	No	No
6	Road Reserve / No dwelling access	No Renewal Standard				

Renewal frequency:

The time intervals for renewal works on sealed roads are based on the life for which each road component is designed and within the limits of Council's finances, as set out in the Transportation Asset Management Plan and Long Term Financial Plan. These targets are indicative, as the need for any renewal works will be assessed based on the condition of the road component on a rolling (approximately) 3-year basis. Unsealed roads are included in the maintenance standards.

Table 2:

Road Hierarchy – Sealed Road Target Renewal Frequency						
Class	Top Surface (Years)			Pavement Base Layer (Years)	Pavement Sub Base Layer (Years)	Formation / Earthworks (Years)
	Spray Seal	Asphalt	Concrete			
1	153	20	80	40	200+50	Infinite
2	183	25	80	50+40	200+50	Infinite
3	25+45	25	80	60+45	200+50	Infinite
4	205	NA	80+100	650	200+50	Infinite
5	30+25	NA	80+100	75+75	200+50	Infinite
6	NA					

Other road assets, including Bridges, Culverts, Urban Stormwater and Kerb and Gutter have varying renewal frequencies and are considered on a case-by-case basis, based on condition, function or capacity. These asset sub classes will be covered in other policies.

Maintenance Activities:

In order to prioritise maintenance activities on the Sealed and Unsealed road network, Council has adopted a Response Priority Matrix, which has been developed in line with Councils Enterprise Risk Management Policy and Plan.

The Response Priority Matrix uses a similar approach to a risk matrix, but in this instance only refers to the priority with which Council assigns to the response to an identified maintenance defect.

The actual response time will be determined by the severity of the defect, the hierarchy of the road, and the availability of resources. A response may range from placement of temporary signage to major repairs.

A major failure of road infrastructure is individually assessed and is treated in accordance with the Risk Rating Matrix within Council’s Enterprise Risk Management Policy and Plan framework. This would illicit an individually prioritised response and would not be managed as a maintenance activity.

For maintenance activities the Priority Response Matrix is shown in Figure 1 below

Figure 1: Priority Response Matrix

Defect Severity	High	Very High	Very High	High	Medium
		Very High	High	Medium	Medium
		High	Medium	Medium	Low
	Low	Medium	Medium	Low	Low
		Class 1			Class 5
		Road Hierarchy / Traffic Volume			

Sealed Road Maintenance:

For the purposes of this Policy, Council accepts the maintenance for the full length of all existing sealed public roads included in its asset register. This does not include that portion of a sealed road that leaves the road reserve, and terminates within private property.

Sealed roads are formally condition assessed on a rolling 3-year (approximately) basis utilising electronic / laser measurement of rutting and cracking. The survey generates a Seal and Pavement condition rating, which is used to develop the ongoing resealing, pavement rehabilitation and heavy patching programs.

In addition to these assessments, Council staff undertake ongoing assessments of the sealed road network and prioritise repairs and maintenance on an as needs basis. Following a customer request, relevant staff will assess any defects and allocate a priority in line with Council’s Priority Response Matrix (Figure 1).

Table 3:

Maintenance standards for Sealed Roads			
Class	Inspection Program	Maintenance Intervention Level	Response Priority ¹
1	3 Yearly, Staff informal, Customer Request	Surface defect (Pothole)	H
		Edge drop (>150mm depth)	VH
		Delineation (Guide Posts, Linemarking)	M
		Pavement Failure (Shoves >100mm)	VH
		Visibility encroachment (Vegetation)	M
2		Surface defect (Pothole)	H
		Edge drop (>150mm depth)	VH
		Delineation (Guide Posts, Linemarking)	L
		Pavement Failure (Shoves >100mm)	VH
		Visibility encroachment (Vegetation)	M
3		Surface defect (Pothole)	M
		Edge drop (>150mm depth)	H
		Delineation (Guide Posts, Linemarking)	M
		Pavement Failure (Shoves >100mm)	H
		Visibility encroachment (Vegetation)	M
4	Surface defect (Pothole)	M	
	Edge drop (>150mm depth)	M	
	Delineation (Guide Posts, Linemarking)	L	

Maintenance standards for Sealed Roads			
Class	Inspection Program	Maintenance Intervention Level	Response Priority ¹
5		Pavement Failure (Shoves >100mm)	H
		Visibility encroachment (Vegetation)	L
		Surface defect (Pothole)	L
		Edge drop (>150mm depth)	M
		Delineation (Guide Posts, Linemarking)	L
		Pavement Failure (Shoves >100mm)	L
		Visibility encroachment (Vegetation)	L
6	NA	Council will not maintain these roads	

¹ Defect response priority is determined with reference to Council's Enterprise Risk Management Policy and Plan.

Unsealed Road Maintenance:

For unsealed roads, it is recognised that condition varies greatly due to traffic type and usage, topography, available construction and maintenance materials and can vary greatly along the length of a road. Over the full road length, various homogenous segments will generally remain in a good level of service with other sections tending to be in a poorer state.

Council undertakes regular inspections of its unsealed road network, as detailed in the Table 4 below. Unsealed roads are assessed for their drivability, profile (shape) and percentage of gravel remaining. Other defects in the road are also recorded and considered in developing an actual response.

Response priorities are determined with reference to Council's Risk Management Policy and Plan.

An Unsealed Class 5 road can be further divided into category A and B segments. Class 5A segments of a road are defined as the road to the point of the second last lawfully continuously occupied residence. Class 5B segments are from the second last to the last lawfully continuously occupied dwelling access, or other facility approved by Council. Council will not maintain roads beyond the last lawfully continuously occupied dwelling access, or other facility approved by Council.

Class 5B segments will be inspected as Class 5 roads as detailed in the Table 4 below. Required maintenance will be determined and programmed following each inspection, will generally be minimal in nature, but sufficient to ensure the road is trafficable. They are not included on a scheduled grading program. These roads / road segments will be maintained on an as needs basis and as Council funding permits.

Council will not maintain Class 6 roads at Council expense, and they are not included in Council's Financial Assistance Grant (FAG) calculations or Council's asset register. They include but are not limited to Crown or Council Road Reserves with no formed road; evidence of vehicular tracks; or evidence of previously formed road structure.

Where a property owner has placed a gate, [cattle grid](#) or other barrier over a road on a Crown Road Reserve, Council will deem the road beyond the gate / barrier to be a Class 6 road and will not undertake any inspection or maintenance of that road segment. Where this occurs on a Council owned Road Reserve, Council will require the removal of the gate / barrier at the property owner's expense, [or will consider selling that segment of the road to the property owner and will not maintain the gated segment until removal is completed.](#)

Council will consider 'closing' and selling or leasing roads to property owners who wish to [acquire or](#) maintain a road segment at a higher standard than Council [s is able to maintain within its](#) budgetary constraints [allow.](#)

Table 4:

Maintenance standards for Unsealed Roads			
Class	Inspection Program	Maintenance Intervention Level	Response Priority ¹
1	3 monthly, Customer Request	Surface defect (Roughness)	VH
		Edge drop (>150mm depth)	M
		Delineation (Guide Posts, Signs)	L
		Pavement Failure (Rutting, Bogs)	VH
		Visibility encroachment (Vegetation)	L
		Scours (Washout in travelled area)	H
2	N.A	N.A (There are no Class 2 Unsealed Roads)	NA
3	6 monthly, Customer Request	Surface defect (Roughness)	H
		Edge drop (>150mm depth)	M
		Delineation (Guide Posts, Signs)	L
		Pavement Failure (Rutting, Bogs)	H
		Visibility encroachment (Vegetation)	L
		Scours (Washout in travelled area)	M
4		Surface defect (Roughness)	L
		Edge drop (>150mm depth)	H

Maintenance standards for Unsealed Roads			
Class	Inspection Program	Maintenance Intervention Level	Response Priority ¹
	12 monthly, Customer Request	Delineation (Guide Posts, Signs)	L
		Pavement Failure (Rutting, Bogs)	M
		Visibility encroachment (Vegetation)	L
		Scours (Washout in travelled area)	M
5A		Surface defect (Roughness)	L
Edge drop (>150mm depth)		M	
Delineation (Guide Posts, Signs)		L	
Pavement Failure (Rutting, Bogs)		M	
Visibility encroachment (Vegetation)		L	
Scours (Washout in travelled area)		M	
5B	When access not possible	H	
6	NA	Council does not maintain these roads	

¹ Defect response priority is determined with reference to Council's Risk Management Policy and Plan.

Acceptance of Roads onto the Road Asset Register:

The asset register has been determined by assessing and measuring all current roads maintained by Council. These include roads that have been constructed by Council or by another party to Council standards and formally handed to and accepted by Council.

They are stored in Council's Asset Management System, which also contains information on some roads that are not maintained by Council. These roads are not included in Councils Financial Assistance Grant (FAG) calculations or included in Councils asset register.

For Council to accept any additional road on to the asset register, the road must meet all of the criteria outlined below:

1. The subject road will be the sole means of access to at least one lawful continuously occupied residence with an approved dwelling consent, or other facility approved by Council. If a residence is able to obtain access from another maintained road, the road may not be included.
2. The road shall be constructed at no cost to Council to the required standard as determined from Council's 'Guidelines for Engineering Works'.
3. The maximum length accepted shall be the distance to the access point of the last lawful continuously occupied residence(s) with a lawful dwelling consent, or other facility approved by Council.

4. The constructed road shall be wholly located within the designated road reserve. Where this is not practical, it may be acceptable to realign the road reserve, with all costs to be met by the applicant.
5. There shall be no timber bridges located on the subject road and any culvert or bridge structures shall comply with the relevant Australian Standards and any provisions within Council's 'Guidelines for Engineering Works'.
6. Where Council accepts the transfer of a Crown Road it shall approach the State Government to have the road reclassified as a public road over the nominated length. If the road is accepted for inclusion to the asset register, all costs for reclassification are to be met by the applicant.

Additions to the asset register will only be considered on a written request to Council or lodgement of a Development Application. In determining a written request or an application, Council will consider the above criteria, Council's financial position, the maintainability of the road including the gradient and the additional road length.

Where Council accepts additional lengths of road in association with a Development Application for a dwelling-house or dwelling envelope the road transfer and construction will be required prior to the release of the subdivision / occupation certificate.

LEGISLATIVE AND POLICY LINKS

This Policy complies with various provisions of the Civil Liability Act 2002 [NSW] including sections 42, 43 and 45 by ensuring resources allocated to an asset and its maintenance are utilised to meet Council's commitments and in accordance with other relevant Legislation and associated Regulations.

These include, but are not limited to:

- NSW Roads Act, 1993,
- Local Government Act 1993,
- Disability Inclusion Act 2014,
- Environmental Planning and Assessment Act 1979,
- Civil Liability Act 2002,
- Blayney Shire Council Enterprise Risk Management Policy and Plan,
- Blayney Shire Council Complaints Management Policy,
- Blayney Shire Council Legislative Compliance Policy,
- Blayney Shire Council Work Health and Safety Policy,
- Blayney Shire Council Asset Management Policy,
- Blayney Shire Council Road and Bridge Naming Policy.

IMPLEMENTATION

Appeals to the Policy or its application can only be made by submission to a Council meeting.

End of Policy

	Date	Minute
Adopted:	20/04/2020	2004/012
	21/11/2022	2211/010
	21/03/2023¹	2303/019
	XX/XX/2026	
Next Review:	19/12/2029	

1: Council endorsement of Blayney Shire Road Hierarchy Map (attachment) – March 2023



Planning Agreements

Policy	18D
Officer Responsible	Director Planning and Environmental Services
Last Review Date	XX/XX/2026

Strategic Policy

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1. Purpose

A planning agreement is a voluntary agreement or other arrangement between a planning authority and a developer, who has:

- sought a change to an environmental planning instrument; or
- made or proposes to make a development application or application for a complying development certificate,

under which the developer is required to:

- dedicate land free of cost;
- pay a monetary contribution;
- provide any other material benefit; or
- provide any combination of the above,

to be used for or applied towards a public purpose.

The purpose of this Policy is to provide a clear framework and sound governance for the negotiation and management of planning agreements in the Blayney local government area.

This Policy applies where a proponent voluntarily proposes a planning agreement referred to under section 7.4 of the Environmental Planning and Assessment Act, 1979.

2. Objectives

The objectives of the Policy are:

- To establish a clear, open, transparent and accountable framework to govern the negotiation, use, management and implementation of planning agreements by Council;
- To ensure that the framework is soundly based upon probity and enables efficient, fair, transparent and accountable negotiations and implementation;
- To promote public trust and confidence in the processes of negotiation, execution and implementation of planning agreements;
- To ensure that Council, Council officers and proponents understand their roles and responsibilities when negotiating, assessing and implementing planning agreements;
- To provide planning flexibility for Council to negotiate fair, reasonable and equitable development contributions by proponents of planning proposals and development applications
- To enhance the range and extent of development contributions towards the optimal delivery of public infrastructure services and facilities in the Council area; and
- To enable innovative approaches to the delivery of public infrastructure, services and facilities.

3. Definitions

In this Policy the following definitions are used:

Act means the Environmental Planning and Assessment Act (as amended) 1979;

Consent ~~— means~~ The Development Consent that has initiated the Application granted under the Environmental Planning and Assessment Act, 1979;

Council means Blayney Shire Council;

Development application (DA) has the same meaning as in the Environmental Planning and Assessment Act 1979;

Development contribution means the kind of provision made by a developer under a planning agreement being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit, or any combinations of the above;

Explanatory Note means a written statement that provides details of the objectives, nature, effects and merits of a planning agreement or an amendment to, or revocation of, a planning agreement;

Instrument Change means a change to an Environmental Planning Instrument to facilitate development which is the subject of a Planning Agreement;

Material Public Benefits (MPB) - consist of some physical (material) component, other than land dedication or monetary contribution, in settlement of the contributions levied upon the development consent, but does not include works nominated in a contribution plan's Work Schedule or planning agreement;

Planning benefit means a development contribution that confers a net public benefit – that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community;

Proponent means a person who has sought a change to an Environmental Planning Instrument through the lodgement of a Planning Proposal or who has submitted or proposes to lodge a development application – or, by formal agreement, is a representative of an applicant for such changes;

Public facilities mean public infrastructure, facilities, amenities and services;

Plan ~~— means~~ tThe applicable Contribution Plan that levies contributions pursuant to Section 7.11 ~~contribution plan~~ and 7.12 of the Environmental Planning and Assessment Act, 1979;

Planning obligation means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution;

Planning Proposal means a proposed change to the Blayney Local Environmental Plan 2012 ~~—a change to an Environmental Planning Instrument—~~ to enable a development subject of an application to be made permissible and to carry out the development subject of the development application and planning agreement;

Practice Note means the practice notes on ~~development contributions~~ [Planning Agreements](#) published ~~by the Department of Infrastructure, Planning and Natural Resources on 19 July 2005; Revised Local Development Contributions Practice Note published by Department of Planning and Infrastructure in 2014; and Draft Practice Note on Planning Agreements published in November 2016 by NSW Planning and Environment on the NSW Planning Portal.~~

Public includes a section of the public;

Public benefit means the benefit enjoyed by the public as a consequence of development contribution;

Public Purpose includes:

- Provision of, including recoupment of, the cost of public amenities or public services;
- Transport or other infrastructure relating to land;
- Funding of recurrent expenditure relating to the provision of public amenities of public services, transport or other infrastructure;
- Monitoring of the planning impacts of development; and
- Conservation or enhancement of the natural environment;

Regulation means the Environmental Planning and Assessment Regulation 2021;

Surplus value means the value of the developers' provision under a planning agreement more than the sum of the value of public works required to be carried out by the developer under a condition imposed under section 4.17(1) of the Act and the value of development contributions that are or could have been required to be made under section 7.11 or section 7.12 of the Act in respect of the development subject of the Agreement.

Works In Kind (WIK) - is the undertaking of work, or the provision of amenities, services or facilities, or the dedication of land as nominated in the Plan's Work Schedule and includes reference to Contribution Offsets;

WIK Agreement - A formal agreement that must be entered into with Council following Council approval of an Application under this policy;

4. Policy Statement

Council is committed to the equitable and transparent approach to the negotiation, development and management of planning agreements to facilitate the delivery of public infrastructure to meet the needs of the community.

5. Principles

5.1 Guiding Principles

The Council's use of planning agreements will be governed by the following guiding principles:

- Development consent cannot be refused because a planning agreement has not been entered into or the proponent has not offered to enter into one;
- A condition of development consent can only require a planning agreement to be entered into by a proponent strictly in accordance with an offer made by the proponent;
- Planning agreements will not be used to fetter the development assessment process;
- Planning agreements will not improperly fetter the exercise of discretion and the functions of Council under the Act, Regulation or any other Act or law;
- Council will use planning agreements only for a proper planning purpose and a purpose which stands the tests of fairness, reasonableness and equity;
- The interests of individuals or interest groups will not outweigh the public interest when considering, negotiating and finalising a planning agreement;
- Council will not use its statutory position to gain unreasonable public benefits from proponents when considering, negotiating, finalising, executing and implementing planning agreements;
- Council will take appropriate steps to ensure that it avoids any conflict of interest between its role as a planning authority when it has a commercial interest in the outcomes of a planning agreement;
- Council will ensure that planning agreements are based upon sound, reasonable and accountable financial management;
- Council will ensure that all processes and content of a planning agreement are transparent and soundly based upon probity;
- Should there be any inconsistency between this Policy, the Environmental Planning and Assessment Act and its Regulations and/or any relevant Practice Note on the NSW Planning Portal then the Act, Regulation or Practice Note shall prevail to the extent of that inconsistency;
- Negotiation of a planning agreement is to be entered into in good faith by all parties; and

The planning agreement reflects the priorities of the community as identified in Council's Community Strategic Plan

5.2 Acceptability Test

Practice Notes issued by the [State-NSW](#) government sets out an Acceptability Test for assessing whether planning obligations are appropriate under a planning agreement. The Acceptability Test ensures planning agreements:

- Are directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
- Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.;
- Produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- Provide for a reasonable means of achieving the desired outcomes and securing the benefits; and
- Protect the community against adverse planning decisions.

5.3 Circumstances in which Council will consider the Negotiation of a Planning Agreement

Council at its complete discretion may consider the negotiation of a planning agreement with a proponent who has voluntarily offered to enter into such an agreement in association with a planning proposal or development application. A planning agreement may be considered for such purposes as ~~te~~:

- Compensate for the loss of, or damage to, public infrastructure, facilities, amenities, services, resources or environmental assets caused by the proposed development through replacement, substitution, repair or regeneration;
- Meet the demands created by the development for new public infrastructure, amenities and services or when, in Council's opinion an environmental offset represents a planning and public benefit;
- Address deficiencies in existing provision of public infrastructure, amenities, services and facilities which have a connection with the planning proposal / development application. There should also be a clear rationale and public benefit to take this approach;
- Achieve recurrent funding in respect of public infrastructure, amenities, services and / or facilities and for on-going maintenance of land of environmental significance which is to be conserved;
- Prescribe inclusions in the development that meet specific planning and environmental objectives of the Council;
- Clearly secure public benefits for the wider community;
- Enable items in the work schedules of Council's contributions plans to be brought forward and/or when deficiencies and/or omissions in Council's existing Development Contributions Plans can be addressed;
- Not involve any unreasonable financial liabilities for the Council.

5.4 Application of Clause 4.6 Blayney Local Environmental Plan 2012

In relation to submissions seeking to vary development standards in accordance with Clause 4.6 of Blayney Local Environmental Plan 2012, Council will not accept a provision in a planning agreement to justify a variation from applicable development standards in relation to development unless the Council is of the opinion that the subject matter of the proposed planning agreement properly addresses the matters required to be addressed under that Policy in relation to the dispensation sought and there is a resulting urban design or other outcome which leads to improved planning and public benefit.

6. Requirements of a Planning Agreement

6.1 Mandatory Requirements

The mandatory requirements of a planning agreement are prescribed under section 7.4(3) of the Act. All planning agreements must include:

- A description of the land to which the agreement applies.
- A description of:
 - the change to the environmental planning instrument to which the agreement applies; or
 - the development to which the agreement applies.
- The nature and extent of the provisions to be made by the proponent under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made.
- In the case of proposed development / planning proposal whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 of the Act to the development;
- If the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11.
- A mechanism for the resolution of disputes under the agreement.
- The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the proponent.

Clause 205(1) of the Regulation provides that an explanatory note must accompany a planning agreement that:

- Summarises the objectives, nature and effect of the proposed agreement, amendment or revocation; and
- Contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

The Act does not preclude a planning agreement containing other provisions that may be necessary or desirable in particular cases, except as provided by law.

6.2 Contents of a Planning Agreement

6.2.1 Cost and Value Estimations

Council will provide standard and consistent values and costs for capital and recurrent aspects of planning agreements as much as possible.

Council may require the proponent to fund an independent Quantity Surveyor to provide cost estimates to form the basis of planning agreement costs for capital and recurrent items. Council may use its own values or engage qualified independent persons to determine values.

Where the benefit under a planning agreement is the provision of land for a public purpose, the Council will require a valuation at the proponent's cost and seek to value the benefit on the basis of the estimated amount of compensation to which the proponent would be entitled under the Land Acquisition (Just Terms Compensation) Act 1991 upon the compulsory acquisition of the land.

6.2.2 Recurrent Costs

Council may request proponents, through a planning agreement, to make contributions towards the recurrent costs of public facilities. Where the amenity, service, or public facility primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity.

If the funding of recurrent costs is required to be part of the planning agreement, the planning agreement will include the following matters:

- The specific purpose of the recurrent funding;
- The nature and extent of the recurrent funding
- The time period over which the funding shall be provided;
- Any mechanisms for the indexing of the recurrent funding;
- The heads of consideration for any endowment fund or trust that may be required to be established to manage the recurrent funding;
- The provision of security such as bank guarantee, bond or other form of security to secure the ongoing funding;
- Circumstances in which funding would be renegotiated or revoked; and
- Any other matter relevant to securing the public interest in the achievement of an ongoing public benefit.

6.2.3 Land Dedication

In the case of land identified within a contributions plan, the value of land in that plan will be considered in determining the initial contribution rates.

Land to be dedicated is required to be valued by a suitably qualified expert. Only land required for a specific community benefit and purpose can be considered for dedication. A long term maintenance cost will need to be

included and factored into the final valuation to ensure Council minimises the long term financial burden on the community and the organisation.

The land is to be fit for purpose having specific regard to size, accessibility, topography and location.

Council may refuse the dedication of land when the amount proposed to be dedicated exceeds the minimum area required in a relevant plan and/or the burden of maintenance exceeds the long term benefit of the land to the community.

6.2.4 Monetary Contributions

A planning agreement may make provision for monetary contributions other than contributions under an adopted and in force section 7.11 or section 7.12 Contributions Plan. Council's acceptance of such contributions will be based upon alignment with other Council plans, a clearly articulated public purpose, and the matters stated below.

Where a planning agreement provides for monetary contributions, the following matters are to be stated:

- The amount of the monetary contribution;
- The purpose and extent of the monetary contribution;
- When such contributions are to be paid;
- In the case of staged payments, the nature of the staging or the dates at which time payments are to be made;
- Any mechanisms for the indexing of the monetary contribution against inflation over time;
- Details of any security that is to be provided in lieu of the monetary contribution until such time as it becomes due and payable;
- Any obligations on Council for the expenditure of the monetary contributions and related financial reporting; and
- Any other matter relevant to securing the public interest in the management and expenditure of the monetary contributions

6.2.5 Works In Kind and Material Public Benefit

Council, at its discretion, may accept the provision of a material public benefit or works in kind by a proponent in lieu of the payment of development contributions.

6.2.6 Provision of security under a planning agreement

The Council may require a planning agreement to make provision for a security payment of a minimum of 10 percent of the value of the proponent's obligations under the agreement. (Note: the 10% can be applied per stage only if undertaken in accordance with a staged development consent).

The form of security will generally be the unconditional bank guarantee from an Australian Bank in favour of the Council and on terms otherwise acceptable to the Council

A flat rate of \$20,000 may be applied as security if no civil works are included in the planning agreement.

6.3 Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the proponent, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the different purposes under those agreements, subject to the specific requirements of the relevant agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a timely, fair and equitable way.

7. Probity

Public probity is fundamentally important and it will ensure that the negotiation of any planning agreement is fair, transparent and is directed at achieving public benefits in an appropriate manner, free of corruption.

In this regard, Council will:

- Exhibit in accordance with the Act all planning agreements to ensure openness and transparency;
- Ensure appropriate delegations and separation of responsibilities in considering development applications that involve planning agreements including, the need to ensure processes are soundly based upon documented risk management;
- Ensure that there is clarity of roles for councillors, council management and staff;
- Take every step to ensure that conflicts of interest (actual and perceived) are ameliorated to the greatest extent possible through independent assessment by third parties where Council has a commercial interest (.i.e. landowner or proponent).
- Not enter into any contractual arrangement which purports to guarantee outcomes that are subject to separate regulatory processes and/or fetters the discretion of the assessment and determination of applications.

The General Manager is delegated authority to negotiate planning agreements in accordance with this policy and may sub-delegate this function to Council managers and professional officers as appropriate.

Council will ensure that all negotiations with proponents and their representatives are sufficiently documented.

The Council's process for the preparation, negotiation and execution of planning agreements aims to be efficient, predictable, transparent and accountable. The process seeks to ensure that the negotiation of planning

agreements runs in parallel with applications for instrument changes or development applications.

When agreed by the parties, the concluded range of public infrastructure, amenities, services and facilities, together with the dedication and on-going management of environmentally significant land will be embodied in a Heads of Agreement to be formally endorsed by the parties. This will be the basis for drafting of the planning agreement.

The elected Council has responsibilities for:

- Setting the Policy which directs negotiations of planning agreements,
- Endorsing a planning agreement for public notification; and
- Endorsing the planning agreement in conjunction with determining the Planning Proposal for referral to the Department of Planning and Environment or determining the relevant development application.

8. Involvement of independent third parties in negotiation process

The Council may at its sole discretion, appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, particularly where:

- an independent assessment of a proposed instrument change or development application is necessary or desirable;
- factual information requires validation in the course of negotiations;
- sensitive financial or other confidential information must be verified or established in the course of negotiations;
- facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved; and
- dispute resolution is required under a planning agreement.

9. Public Notification and Engagement

The planning agreement must be negotiated and documented before it is publicly notified as required by the Act and Regulation. The Act states that a minimum period for notification is 28 days.

10. Implementation

10.1 When is a planning agreement required to be executed?

A planning agreement is entered into when it is signed by all of the parties and may include timing and/or staging commitments for the proponent to meet in regard to the completion of works etc.

A planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation.

10.2 Implementation Agreement

In appropriate cases, the Council may require a planning agreement to provide, prior to commencement of the development the subject of the

agreement commences, that Parties enter into an implementation agreement that provides for matters such as:

- the times at which and, if relevant, the period during which, the proponent is to fulfil commitments under the planning agreement;
- the design, technical specification and standard of any work required by the planning agreement to be undertaken by the proponent;
- the manner in which a work is to be handed over to the Council; and
- the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

The Council will generally require a planning agreement to provide that the proponent's obligations under the agreement take effect when the first development consent operates in respect of development that is the subject of the agreement or within an alternative prescribed time frame.

10.3 Monitoring, Review and Enforcement of a Planning Agreement

The Council will monitor the performance of the proponent's obligations under a planning agreement.

The Council will require the planning agreement to contain a provision establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties.

The Council will require the planning agreement to contain a provision requiring the parties to use their best endeavours' to agree on a modification to the agreement having regard to the outcomes of the review.

10.4 Modification or discharge of the proponent's obligations under a Planning Agreement

The Council will generally only agree to a provision in a planning agreement permitting the developer's obligations under the agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- the proponent's obligations have been fully carried out in accordance with the agreement;
- the development consent to which the agreement relates has lapsed;
- the performance of the planning agreement has been frustrated by an event beyond the control of the parties;
- other material changes affecting the operation of the planning agreement have occurred
- the Council and the proponent otherwise agree to the modification or discharge of the agreement; or
- The Minister has determined in writing to the parties not to support the planning proposal.

10.5 Assignment and dealings by the proponent

The Council will require every planning agreement to provide that the proponent may not assign its rights or obligations under the agreement nor have any dealing in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- the proponent has, at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement; and
- the proponent is not in breach of this Agreement.

10.6 Notations on Certificates under section 10.7(5) of the Act

The Council will generally require a planning agreement to contain an acknowledgement by the proponent that the Council may, in its absolute discretion, make a notation under s 10.7(5) of the Act about a planning agreement on any certificate issued under s10.7 of the Act relating to the land the subject of the agreement or any other land.

10.7 Registration of planning agreements

The Council ~~will~~may require a planning agreement to contain provisions for registration of the planning agreement on the title of the land pursuant to section 7.6 of the Act. If registration is required ~~t~~The proponent will undertake the registration at no cost to Council and provide evidence of registration.

10.8 Dispute resolution

The Council will require a planning agreement to provide for mediation of disputes between the parties to the agreement, at their own cost, before the parties may exercise any other legal rights in relation to the dispute.

10.9 Credits and refunds

The Council will determine on a case by case basis generally whether to agree to a planning agreement providing for the surplus value under a planning agreement being refunded to the proponent or offset against development contributions required to be made by the proponent in respect of other development in the Council's area.

10.10 Administration Matters

Three original copies of the planning agreement are required for execution:

1. For the proponent
2. For Council
3. For the Land Titles Office.

The third copy will not be required if the planning agreement is not required to be registered on the title of the land.

Council will provide the proponent with the required paper copies for signature.

The Council will sign and date the required paper copies only after the proponent has signed. Council will then retain one original copy in accordance with the State Records Act 1998. Council will provide the remaining copy / copies to the proponent.

Relevant Legislation

- Environmental Planning and Assessment Act, 1979
- Environmental Planning and Assessment Regulation 2021
- Blayney Local Environmental Plan 2012

Related Policy

- ~~Practice Note: Development Contributions published by the Department of Planning, Industry and Environment February 2021~~
- ~~Planning Circular PS 11-007: Voluntary Planning Agreements and Development Control Plans—NSW Planning 18 February 2011~~
- ~~Planning Circular PS-002: Reporting and accounting requirements for infrastructure contributions~~

Other references

- ~~NSW Mining and Energy Council Roads Calculator and the negotiation framework Schematic~~

END

Adopted:	20/05/2019	1905/012
Lasted Reviewed:	20/05/2019	1905/012
	21/11/2022	2211/010
	XX/XX/2026	
Next Review:	20/11/2029	



Pathway Hierarchy, Standard and Maintenance Policy

Policy	25H
Officer Responsible	Senior Assets Officer
Last Review Date	XX/XX/2025

Strategic Policy

OBJECTIVES

1. To ensure that pathways are maintained in compliance with relevant legislative requirements.
2. To ensure new pathways, or major renewal works consider current access standards, and meet them wherever practicable.
3. To ensure that the maintenance of pathways is undertaken within the financial constraints and competing interests placed on Council, and in accordance with the limit of funds available as determined in Council's Strategic Plans and Long Term Financial Plan.
4. To provide clear information on the level of service that Council will provide to maintain pathways defined within the pathway hierarchy.
5. To establish procedures that provide a simple, systematic and readily usable risk management approach to the maintenance of pathways to minimise potential hazards to pathway users resulting in public liability claims or injuries.
6. Other objectives consistent with this policy include:
 - a. Supporting movement and place initiatives.
 - b. Treating ratepayers equitably in the allocation of new capital projects and maintenance services.
 - c. Management of road opening permits (for pathway assets).
 - d. Minimising any environmental impacts of pathway construction, or maintenance.

DEFINITIONS

"pathway" a footpath, shared path, or cycleway surfaced with concrete, asphaltic concrete, bitumen seal or pavers, that are:

- Adjacent to the road network,
- Within Blayney Shire Council parks and recreational areas, or
- Within or adjacent to Blayney Shire Council community facilities

"footpath" a formed (1.5m min. width) path set aside for pedestrian traffic. Some older paths may be narrower than 1.5m in width.

"footway" an unobstructed strip (1.5m min. width) along the verge set aside for pedestrian access which has not been formed. Its width is dependent on whether a footpath, bicycle path or shared path is proposed for the street and it generally begins 1.2m from the back of the kerb or edge of carriageway.

"cycleway" a path or road for the exclusive use of cyclists, or cyclists and pedestrians.

"shared path" A formed mixed use (2.5m min. width) path set aside for pedestrian and bicycle access.

"verge" the area between the property boundary and the kerb (or edge of the roadway).

"other pathway assets" covered in this policy, include:

- bridges on pathways.
- kerb / pram ramps.
- tactile indicators and line markings on pathways, and
- barriers, bollards and railings installed on pathways.

SCOPE

The Policy outlines Council's level of service for pathway maintenance activities and details procedures for the management of the pathway network and related infrastructure. In particular, the Policy covers the following areas:

- Pathway hierarchy,
- Pathway renewal and maintenance,
- Construction standards, and
- Selection of new Capital Works

The Policy does not apply to turfed, gravel surfaced or unformed footpaths, boardwalks, walkways or walking trails.

PATHWAY HIERARCHY

Council uses a 3 level hierarchy based on the level and nature of usage of the pathway network within each urban area. The hierarchy is used to determine the inspection frequency and the response time for identified defects. Inspections are used to determine the overall condition of a pathway segment (generally from block to block, or where there is a change in width or material) and also identify individual defects.

The three Hierarchy categories are:

Pathway Hierarchy	Pedestrian Usage	Inspection Frequency	Description
1	High	6 Monthly	Footpaths located in the CBD of each town, where there is significant business and pedestrian activity
2	Medium	Annually	Around schools, childcare facilities, nursing homes and aged care facilities
3	Low	Annually	General local residential streets

Construction and Renewal Standards:

Wherever practicable, subject to physical and budgetary constraints Council applies the following standards to the construction of new pathways and the renewal of significant sections of existing pathways.

The target New / Renewal Standards are:

Pathway Type	Pathway Width (m)	Grade (Steepness) ¹	Cross fall (Slope)
Shared Path	2.5	5%	2.5%
Footpath	1.5		
Paved	As required		
Kerb / Pram Ramp	As per pathway	12.5% ²	As per road grade

¹ This is only a target, as a grade of 5% or less on pathways within the Blayney Shire is rarely achievable.

² For a maximum length of 1520mm.

Renewal works generally relate to the replacement of significant lengths of an existing pathway, or the replacement of an entire segment. Renewals are generally identified from the condition of the entire segment, based on a 1 (excellent – normal maintenance only) to 5 (very poor – requires major repair / replacement) scale. Replacement, upgrading, or construction of ‘missing’ pram / kerb ramps are also considered within the Renewals program.

Construction of additions to the pathway network are detailed in Council’s Delivery Program and Long Term Financial Plan. These are informed by:

- The Blayney Shire Council *Active Movement Strategy, 2016*.
- The Blayney Shire Council *Town and Village Community Plans*, and
- Developments resulting in changed usage patterns, such as a new Child Care facility.

In some instances, the construction of new pathways can be made possible, as a result of Council successfully applying for grant funding from the Australian or NSW governments. In most instances this will involve ‘bringing forward’ projects that have already been identified in existing Council plans, particularly the Active Movement Strategy / Long Term Financial Plan.

MAINTENANCE ACTIVITIES

In order to prioritise maintenance activities on the pathway network, Council has adopted a Response Priority Matrix, which has been developed in line with Council’s Enterprise Risk Management Policy and Plan and the Statewide Mutual Best Practice Manual. The Response Priority Matrix uses a similar approach to a risk matrix, but in this instance only refers to the priority that Council assigns to the response to an identified maintenance defect.

The actual response time will be determined by the severity of the defect, the hierarchy of the pathway, and the availability of resources. A response may range from spraying with paint to highlight the issue, to replacement of a section of pathway. Multiple defects within a section of pathway would be managed through the renewals program.

For maintenance activities the Priority Response Matrix is shown in Table 1 below:

Table 1: Priority Response Matrix

Defect Severity	High	High	Medium	Medium
		Medium	Medium	Low
	Low	Low	Low	Low
	Hierarchy 1	Pathway Hierarchy		Hierarchy 3

The level and nature of usage (the hierarchy), combined with the severity determine the response time for addressing any defects. The types and severity of defects are

shown in Table 2 below:

Table 2: Severity Response Matrix

Defect Type	Severity Measure	Hierarchy – Response Priority		
		1	2	3
Trip	>30mm	H	M	M
	20–30mm	M	M	L
	<20mm	L	L	L
Crack	>20mm	M	M	L
	10-20mm	L	L	L
	<10mm	L	L	L
Heaved Joint	>30mm	H	M	M
	20–30mm	M	M	L
	<20mm	L	L	L
Slipperiness	Severe	H	M	M
	Moderate	M	M	L
	Minor	M	M	L
Vegetation Encroachment	>50%	H	M	M
	25-50%	M	M	L
	<25%	L	L	L
Edge Drop-off	>50mm	H	M	M
	25-50mm	M	M	L
	<25mm	L	L	L
Utilities	Lid failed	M	M	M
	Lid missing	H	H	H

Response times, as determined by the Response Priority Matrix are set out in Table 3 below:

Table 3: Priority Response Times

Priority Response Rating	Council Response Timing
H	Repair within 24hours, or make safe within 24 hours and program repairs.
M	Program repair works and monitor through regular inspection program.
L	Monitor through regular inspection program.

Identification of maintenance issues is predominantly through regular inspections (~~6 monthly for Hierarchy 1 and 2 and annually for Hierarchy 3As outlined above~~) by Council's Asset staff, although they can also be identified by:

- Customer Requests System which is reported to the Council's Risk Officer and Assets Officer. An assessment of the defect is undertaken and action is prioritised under the Defect Priority Response Matrix.
- Service requests from staff, which are reported through Supervisors to Assets staff and treated as per a Customer Request from the public, and
- Road Opening Permits are required to be submitted to Council by public utility authorities and trades people. The application requires details on how pedestrians will be managed during the works, through to details on the permanent restoration works.

RELATED DOCUMENTS:

There a number of Council and Guideline documents that impact on Council's role in constructing, renewing, and maintaining pathways, which include, but are not limited to the following:

- *Statewide Mutual Best. Practice Manual – Footpaths (Nature Strips, Medians and Shared Paths)* Version 6, August 2019.
- Australian Standard, *AS1428 – Design for Access and Mobility*.
- Institute of Public Works Engineering Australasia (IPWEA), NSW, Roads & Transport Directorate, *Guide for the Design of Accessible Outdoor Spaces, 2018*.
- *Blayney Shire Council, Community Strategic Plan*.
- AssetFinda Asset register of footpath, shared path and cycleways.
- *Blayney Shire Council, Long Term Financial Plan* (various years).
- *Blayney Shire Council, Delivery Plan* (various Years).
- *Blayney Cabonne Orange Disability Inclusion Plan*.
- *Blayney Shire Council, Active Movement Strategy, and*
- *Various Town and Village Community Plans*.

LEGISLATIVE AND POLICY LINKS

This Policy complies with various provisions of the Civil Liability Act 2002 [NSW] including sections 42, 43 and 45 by ensuring resources allocated to an asset and its maintenance are utilised to meet Council's commitments and in accordance with other relevant Legislation and associated Regulations.

These include, but are not limited to:

- NSW Roads Act 1993,
- Local Government Act 1993,
- Disability Inclusion Act 2014,
- Environmental Planning and Assessment Act 1979,
- Crown Lands Act 1989,
- Civil Liability Act 2002,
- Blayney Shire Council Enterprise Risk Management Policy and Plan,
- Blayney Shire Council Complaints Management Policy,
- Blayney Shire Council Legislative Compliance Policy,
- Blayney Shire Council Work Health and Safety Policy, and
- Blayney Shire Council Asset Management Policy.

IMPLEMENTATION

Appeals to the Policy or its application can only be made by submission to a Council meeting.

End of Policy

	Date	Minute
Adopted:	26/06/2021	2106/011
	21/11/2022	2211/010
	XX/XX/2025	
Next Review:	19/12/2029	



Fitness Instructors and Group Trainers

Policy	25M
Officer Responsible	Director Infrastructure Services
Last Review Date	XX/XX/2025

Strategic Policy

1. POLICY OBJECTIVE

To provide a framework for the effective management of the commercial use of Blayney Shire Council's Parks and other Public Open Spaces, for personal and group fitness training activities, and to minimise the disturbance of the general public's use of these facilities.

2. DEFINITIONS

Hazard–	Anything with potential to harm health, life or property.
Risk–	The probability that a hazard will cause injury or damage.
Parks & Public Open Spaces–	Those parks, public open space areas, and recreational spaces, as identified in this policy for approved use within the Blayney Shire Local Government Area.

3. BRIEF

Blayney Shire Council recognises the significant contribution the Fitness Industry has made in Australia ~~and has observed the substantial growth over the past two decades~~. It is ~~therefore~~, important that Blayney Shire Council acknowledges ~~such the benefits to Blayney residents, growth and meet balances~~ the demands of private enterprise, council residents and park users.

The management of the use of community land within the Blayney Shire Council Local Government area is regulated by the Local Government Act 1993 and Crown Lands Act 1989, and is subject to Council's plans of management. This policy will ~~address the various issues raised due to the increasing numbers set guidelines for the conditions under which~~ of personal trainers using Parks and Public Open Spaces.

4. PURPOSE

To provide effective management of the use of Blayney Shire Council's Parks and Public Open Spaces, by group fitness instructors and personal trainers.

Council aims to:

- Encourage supervised physical activity
- Enhance public health outcomes
- Minimise damage to the local environment
- Minimise impact on Council assets
- Minimise the impact on surrounding residents
- Address public Risk concerns
- Ensure equity of access to all Parks and Public Open Spaces

5. PERMITTED AREAS

Table 1 below provides a list of Parks and Public Open Spaces within which Group Fitness Instructors or Personal Trainers are approved to operate:

Table 1. Parks and Public Open Spaces approved for use by Group Fitness Instructors or Personal Trainers

Locality	Description	Lot	DP
Blayney	Carrington Park	2	1038633
	Heritage Park adventure playground and wetlands	320	750380
		701	1023215
	Napier Oval and Hobbys Yards Road open parklands	53	237649
		Dakers Oval	1
	2		
	3		
	4		
5			
Medway/Mount Errol Street parklands	7001	1023253	
	107	253126	
Orange Road open parkland "Frog Hollow"	134	253126	
	18	244853	
	43	240960	
	1	791883	
	1	241681	
Carcoar	Carcoar Oval and parklands	7002	1023332
	Belubula River parklands	3	758225
		1	1090769
Lyndhurst	Lyndhurst Recreation Ground	73024	1148005
	Capital Park Lyndhurst Recreation Ground	7302	999523 1148005
Mandurama	Mandurama Memorial Sporting Grounds	1 - 4	1088270
		9 - 16	1088272
		5	1088273
Millthorpe	Redmond Oval	235	750384
Neville	Neville Memorial Park	1	402145
Newbridge	Newbridge Recreation Ground	1	154867

The number of permits issued per location will be limited to manage congestion.

6. EXCLUSION ZONES

Organised or commercial group fitness and personal training activities are not permitted within or on the following areas:

- King George Oval
- Carcoar Dam
- Cemeteries
- Car parks
- Public roads
- Footpaths
- Park furniture including picnic tables, shelters, seats and benches
- Playgrounds
- Bushland areas
- Within ten metres of memorials, memorial seats and playground equipment
- Within twenty metres of residential dwellings
- Within twenty metres of all sporting activities

- Sporting fields allocated to sporting clubs during their allocated use

Council may nominate other areas during the life of this policy as it sees fit.

7. APPLICATION TO USE COUNCIL PARKS AND PUBLIC OPEN SPACES

A request to use Council Parks and Public Open Spaces for personal or group fitness training must be made on the prescribed form.

Approvals will be valid for up to ~~one~~ two years (with dates clearly specified in the application), authorising each hirer to undertake fitness activities in accordance with this policy.

Applications will be assessed, taking into consideration the following factors:

- Type of activities to be undertaken and the potential impact on other users and neighbouring residents during the times requested
- Whether the number of clients will impact on the area requested
- Whether the activities will contribute to increasing congestion or user conflict in the areas requested
- Whether the proposed site is within an exclusion zone

8. ELIGIBILITY

All applicants must:

- ~~hold a minimum Certificate IV in Fitness (or approved equivalent)~~
- ~~be registered with Fitness Australia (or similar body).~~
- hold a current Senior First Aid Certificate
- maintain Public Liability Insurance which nominates Blayney Shire Council as an interested party, to a minimum of \$20 million

Failure to provide one or more copies of the above documents will result in non-approval by Council.

9. PERMISSABLE FITNESS ACTIVITIES

- Boxing and padded training (non-contact)
- Organised aerobic training
- Yoga, Tai Chi, Pilates type activities
- Meditation (or like activities)
- Circuit training
- Walking and running
- Or any other pre-approved fitness activity

10. PROHIBITED FITNESS ACTIVITIES

- Portable training equipment – rowing machine, cross trainer, bench press etc.
- Training with companion animals, on or off leash
- ~~Use of heavy items – tyres etc. being dragged in any form~~
- Activities that damage natural surfaces such as turf, bushland etc
- Suspension of boxing, kickboxing bags or other training apparatus from trees and/or structures in Parks and Public Open Spaces

- Utilising trees, seating, picnic table, rotundas and other park infrastructure for exercise training.
- Intimidating, violent or aggressive activities such as boot camp style training
- Create any noise from training activities that unreasonably disturbs other users and/or surrounding residents, [including amplified music or amplified audio \(voice\) equipment](#)

11. FEES

Fees (Inc GST) are set out in Council's Annual Fees and Charges available on Council's website www.blayney.nsw.gov.au

12. PARKING AVAILABILITY

Group Fitness Instructors, Personal Trainers and attendees are to park in designated parking spaces located in Council space (including on public roads in accordance with the NSW Road Rules).

Permit holders are solely responsible for ensuring that all group session participants park in designated spaces.

Parking on grassed open space is not permitted and is a breach of Section 632(1), 650, 651 of the *Local Government Act 1993 & NSW Road Rules*.

A breach of such laws may result in fines.

13. ACCESS TO PUBLIC TOILETS

Access to public toilets (where available) may be made available for use by Group Fitness Instructors, Personal Trainers and their clients.

Where public conveniences are locked outside of ordinary Council business hours, a key may be made available by separate application and upon payment of the prescribed key deposit.

Council will clean and maintain public toilets that are ordinarily open for use by the general public, outside the hiring period.

Group Fitness Instructors, Personal Trainers and their clients, must leave the toilet facilities clean and tidy.

14. WET WEATHER

Council utilises a system of visual assessment of turf surfaces during periods of wet weather to assess their usability. An unusable surface is one that has been saturated to a point where any further rainfall will pond water on any portion of its surface making even pedestrian traffic a damaging action.

A point [will may](#) be reached for each Park [and/](#) Public Open Space beyond which it may be expected that usage of the facility will result in damage to the turf surface. Upon that point being reached, use of the Park and Open Public Space, will be suspended until such time as it is considered safe to resume use without subsequent use causing damage to the surface.

15. STORAGE

All permitted equipment is not to be stored on site at any Council premises.

16. ANTI-SOCIAL BEHAVIOUR

The permit holder is responsible for the conduct of clients and will ensure that neither they nor ~~others~~ their clients engage in anti-social behaviour. Failure to do so will may result either in a written warning or their approval terminated immediately if an unlawful act has been committed.

Should a permit be terminated prior to the end of the approval period, fees will not be refunded either in part or full.

17. REPORTING

Should there be an accident or injury arising through the Hirer's use, the Hirer must inform Council in writing within seven (7) days of the incident.

The Hirer must notify Council immediately upon becoming aware of any broken facilities or dangerous conditions of the Park and Public Open Space.

18. TERMINATION

Council reserves the right to revoke the permit if in its opinion it has determined that the trainer has breached the conditions of the permit or terms set out in this Policy.

19. GENERAL CONDITIONS

- ~~• Instructors must be licensed Trainers and be registered with Fitness Australia (or similar body). A copy of the certificate of registration must be provided to Council.~~
- ~~• Instructors must have a current Senior First Aid Certificate and provide Council with a copy.~~
- Instructor's activities must not at any time interfere with ~~permanent~~ other licensed/ and or casual-public users of the Parks and Public Open Spaces. This includes limiting the number of clients per session to ensure shared public use of the park / space.
- The Licensed-approved Instructor shall indemnify and hold harmless the Council from and against all damages, sums of money, costs, charges, expenses, actions, claims and demands which may be sustained or suffered or recovered or made against Blayney Shire Council by any person for any loss of life or injury or damage any person may sustain due to the negligent act of the Instructor whilst conducting a training session.
- If operating under an ABN, ~~t~~The Instructor shall maintain and provide Council with a copy of their public liability cover, nominating Blayney Shire Council as an interested party and should be in the sum of \$20,000,000.
- The Instructor must keep and maintain a logbook of accidents or injuries and forward a copy to Council for their records.

- A temporary flag or marker shall be erected during sessions in recognition of to identify the area where the training will be taking place.
- The Instructor shall be responsible for all occupational health and safety legislation, regulations and requirements pertaining to the running of their business.
- ~~The Instructor shall not exceed 18 persons per squad when conducting training in a Park and Public Open Spaces.~~
- ~~An Instructor shall not conduct aggressive and intimidating activities such as boot camp style training. That is any activity that is deemed to be aggressive or intimidating in nature whether real or perceived by participants or the general public~~
 - ~~No amplified music or amplified audio (voice) equipment is permitted.~~
 - ~~The Instructor must not use picnic tables and street furniture as training aids and not cause excessive wear and tear to turfed areas, natural areas and bushland.~~
 - ~~The Instructor shall not suspend boxing, kickboxing bags or other fitness apparatus from trees and/or structures in the public open space.~~
 - ~~The instructor shall conduct their activities so not to dominate, monopolise and/or obstruct stairways or pathways~~
 - ~~The instructor must ensure that any training group, for which they are responsible, runs in a single file when running in narrow areas or pathways.~~
- The Instructor is not permitted to display any advertising signage including banners or “A” Frame signs on Council’s Parks and Public Open Space.
- ~~A point will be reached for each Park and Public Open Space beyond which it may be expected that usage of the facility will result in damage to the turf surface. Upon that point being reached, use of the field will be suspended until such time as it is considered safe to resume use without subsequent use causing damage to the surface.~~
- The instructor is responsible for ensuring the area chosen to undertake training is safe for purpose. Council gives no warranties as to the suitability of any particular site for use as a personal training area. Any Hazards requiring repair noted by the instructor should be reported to Council.

End of Policy

Adopted:	15/02/2016	<Minute>
Lasted Reviewed:	15/02/2016	1602/016
	16/07/2018	1807/008
	XX/XX/2025	
Next Review:	19/12/2029	



Recycled Water Policy

Policy	27E
Officer Responsible	Manager Wastewater and Urban Services
Last Review Date	XX/XX/2025

Strategic Policy

BACKGROUND

The use of recycled water is a nationally accepted approach to responsible water and environmental management, and forms part of Council's commitment to water conservation.

Council supports the responsible use of recycled water and is committed to developing and implementing preventive risk management systems to ensure the protection of human and environmental health.

Council is the owner and operator of a wastewater utility business (the sewer fund) comprising pipelines, pump stations and a sewer treatment plant.

As a local water utility, Council is required to comply with the NSW government's Best Practice Management of Water and Sewerage Guidelines, issued under section 409(6) of the Local Government Act 1993, incorporating the pricing principles for recycled water contained in the guidelines under the National Water Initiative (principle 7 - Cost Recovery) (the Guidelines), which provides that prices should recover efficient direct costs, including capital costs.

Compliance with the Guidelines enables Council to achieve sustainable water supply and sewerage businesses and comply with the Australian Government's National Competition Policy and National Water Initiative.

Recycled water is [intended to be](#) used for unrestricted municipal irrigation, as defined in the Australian Guidelines for Water Recycling in the Town of Blayney, ~~and~~ [it may also be used](#) for road construction purposes including dust suppression, ~~and~~ [for](#) hydro-jetting operations, ~~;~~ [for](#) street sweeping and [for](#) street tree watering. It ~~is~~ [may](#) also be supplied to commercial customers by agreement. [It may not be used for other purposes unless approved by the NSW Department of Climate Change, Energy, the Environment and Water \(DCCEEW\).](#)

This policy details the requirements for managing Council's recycled water system. This policy only relates to systems that are using recycled water from Councils Sewerage Treatment Plant and that require a Section 60 approval from [the NSW Department of Primary Industries DCCEEW](#).

DEFINITIONS

In this policy the following definitions apply:

Point of Supply	The truck filling point at the Sewerage Treatment Plant, or the Master Valve at which the recycled water main discharges into the respective recycled water storage tank.
Recycled Water	water supplied by Council from the RWS, being water from the RWTP.

OWNERSHIP OF RECYCLED WATER ASSETS

The Sewer Fund is the owner of the following assets used in connection with the Recycled Water Scheme (RWS):

- the Recycled Water Treatment Plant (RWTP),
- the 140 KL holding tank;
- the access road, standpipe and water truck filling facilities;
- ~~the recycled water main up to the Point of Supply.~~
- ~~Holding tanks and pumps at sports fields~~
- ~~Irrigation lines up to and including sprinkler heads.~~

~~Pipelines and water infrastructure upstream of the Point of Supply will be owned by the General Fund.~~

The income generated by the Recycled Water Business is hypothecated for Sewer Fund purposes pursuant to section 409(3) of the Local Government Act 1993.

PRICING OF RECYCLED WATER

Under the pricing principles set out in the Guidelines, when setting water supply tariffs, Council is required to levy an appropriate cost reflective water usage charge per kL based on the long-run marginal cost of water supply.

The Treated Recycled Water Charge at the Point of Supply will be calculated in accordance with the pricing principles contained in the Guidelines, by Council's Chief Financial Officer, and published in Councils Schedule of Fees and Charges on an annual basis.

POLICY

Council will implement and maintain recycled water management systems consistent with the Australian Guidelines for Water Recycling to effectively manage the risks to public and environmental health.

To achieve this Council will:-

- a. Ensure that protection of public and environmental health is recognised as being of paramount importance.
- b. Maintain communication and partnerships with all relevant agencies involved in the management of water resources, including NSW Health, the NSW Department of ~~Climate Change, Energy, the Environment and Water.Primary Industries—Water (DPI Water) and the NSW Office of Environment and Heritage.~~
- c. Engage users of recycled water to ensure that responsibilities are identified and understood.
- d. Operate and maintain recycled water irrigation sites and infrastructure in accordance with the relevant site management plan.
- e. Develop and implement Recycled Water Management Plans that address the key elements of the Australian Guidelines for Water Recycling.

- f. Ensure that Council's sewerage treatment plant operators are appropriately trained and experienced, and that they are conversant with the requirements of relevant recycled water management plans.
- g. Ensure all staff who perform works or duties that involves working with recycled water are adequately trained and have undertaken the Recycled Water Induction.
- h. Induct all contractors undertaking works that involve potential exposure to Recycled Water using the relevant SWMS's under the BSC WHS Management System;
- i. Follow appropriate safety protocols in relation to working with Recycled Water as outlined in Councils Pollution Incident Response Management Plan and Work Health and Safety Policy
- j. Inform users of Council facilities supplied with Recycled Water of its use, and the risks associated with exposure to Recycled Water.
- k. Manage Recycled Water quality at all points along the delivery chain from source (RWTP) to the Point of Supply (recycled water user).
- l. Use a risk-based approach in which potential threats to recycled water quality are identified and controlled.
- m. Establish regular monitoring of control measures and recycled water quality, including at the Point of Supply, and establish effective reporting mechanisms to provide relevant and timely information, and promote confidence in the recycled water supply and its management.
- n. Develop appropriate contingency planning and incident response capability.
- o. Continually improve practices by assessing performance against corporate commitments and stakeholder expectations.
- p. Erect and maintain appropriate signage at all irrigation sites in accordance with AS/NZS 3500.1:2021 Plumbing and Drainage Water services and AS 1319:1994 Safety Signs for the Occupational Environment.

The quality of recycled water shall meet the water quality objectives in the Operational Verification Monitoring Plan.

Council may reduce, interrupt or discontinue supply if: -

- a. the Recycled Water fails to meet quality standards;
- b. any component of Council infrastructure is damaged or breaks down.
- c. maintenance or repairs to any component of Council infrastructure are to be carried out;
- d. an Authority directs that Recycled Water not be supplied; or
- e. the above circumstances are likely to occur if service is not reduced/interrupted/discontinued.

RELATED LEGISLATION, POLICIES AND GUIDELINES

This Policy has been developed with reference to a number of key pieces of Legislation and associated Regulations and Guidelines, including but not limited to: -

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Work Health and Safety Act 2011 (NSW)
- Work Health and Safety Regulation 2017 (NSW)
- Australian Guidelines for Water Recycling
- Pollution Incident Response Management Plan
- Work Health and Safety Policy

End of policy

	Date	Minute No.
Adopted:	22/06/2020	2006/009
Last Reviewed:	27/06/2022	2206/018
	XX/XX/2025	
Next Review:	19/12/2029	

**LICENCE AGREEMENT FOR
OCCUPATION OF LAND FOR
PUBLIC RECREATION**

BETWEEN

**BLAYNEY SHIRE COUNCIL (ABN 47 619 651 511) (Licensor) AS CROWN LAND MANAGER
FOR UNNAMED RESERVE R.29953 (REDMOND OVAL)**

and

**MINISTER FOR EDUCATION AND EARLY LEARNING (ABN 40 300 173 822) (Licensee)
(MILLTHORPE PUBLIC SCHOOL)**

AGREEMENT dated _____, 20

BETWEEN **BLAYNEY SHIRE COUNCIL (ABN 47 619 651 511)**, appointed under the *Crown Land Management Act 2016* (herein after referred to as the “CLM Act 2016”), as Crown Land Manager of Reserve **UNNAMED RESERVE R.29953, PUBLIC RECREATION PURPOSE** as notified in NSW Government Gazette 23rd September 1899 (hereinafter called the “Licensor”).

AND **MINISTER FOR EDUCATION AND EARLY LEARNING (ABN 40 300 173 822)** of **LEVEL 8 259 GEORGE STREET, SYDNEY** (hereinafter called the “Licensee”)

THE PARTIES AGREE AS FOLLOWS.

1 INTERPRETATIONS, DEFINITIONS AND ADMINISTRATION

1.1 DEFINITIONS

In this Licence unless the contrary intention appears:

Access Plan means the drawing annexed to each Premises Appendix depicting the Premises and a description of the route of access to an Enclosed Area if relevant.

Associates means any invitees, officers, agents, contractors or employees who may at any time be on the Premises.

Base Annual Rent means:

- (a) the Initial Rent where the rent has not been redetermined or adjusted in accordance with sub-clauses 14.4 or 14.5; or
- (b) in any other case - the Rent as last redetermined or adjusted in accordance with those provisions;

Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

CLM Act 2016 means the Crown Land Management Act 2016;

Commencement Date means the date referred to in Column 2 of Item 16 of Schedule 1;

Consumer Price Index Number in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Due Date means the date for payment of Rent under this Licence as is specified in Column 2 of Item 6, of Schedule 1;

Enclosed Area means the fenced area (which comprises the Premises and Third Party Exclusive Areas) described in each Premises Appendix as the Enclosed Area and shown on the Plan annexed to each Premises Appendix where land is, or is intended to be fenced;

Environment has the same meaning given to that term in the *Protection of the Environment Operations Act 1997*;

Environmental Law means any Law relating to the protection of the Environment;

Expiry Date means the date referred to in Column 2 of Item 17 of Schedule 1;

"GST", "taxable supply", "consideration", "tax invoice" and "GST amount" have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hazardous Substance means a substance that because of its quality, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

Improvements means any structure of a permanent nature attached to the land;

Initial Rent means the Rent payable under this Licence in respect of each Premises as is specified in Column 2 of Item 5 of Schedule 1;

Law includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

Licence means this licence including all Schedules and Annexures hereto;

Licensee means the licensee referred to in Column 2 of Item 2, of Schedule 1;

Licensor means the licensor referred to in Column 2 of Item 1 of Schedule 1 and includes its assigns and for the purpose of clauses 35, 36, 37, 38, 39, 40, 41, and 42 includes Her Majesty the King, the State of New South Wales and the Minister and their heirs, successors, agents, servants, employees and contractors;

Market Rent means the Rent as specified in Column 2 of Item 3, of Schedule 1 that would reasonably be expected to be paid for the site if it were offered for the same or a substantially similar use to which the site may be put under the Licence;

Market Rent Review Date means the date described as such in Column 2 of Item 8, of Schedule 1 and expressed as an absolute dollar or as a percent of the Market Rent;

Minister means the Minister administering the *Crown Land Management Act 2016*;

Party/Parties means the parties to this Licence;

Premises means the land or licence area and/or the buildings described in the Premises Appendix and on the plan annexed thereto;

Permitted Use means the use shown in Column 2 of Item 15, of Schedule 1;

Regulations means the *Crown Land Management Regulation 2018*, as amended or replaced from time to time; or the Local Government (General) Regulation 2005;

Rent means the Base Annual Rent calculated and payable upon each Due Date less any Rent Rebate granted to the Licensee together with all other payments due to be paid by the Licensee as Rent under this Licence;

Rent Rebate means such amount as specified in Column 2 of Item 4 of Schedule 1 given to the Licensee from the Licensor as per clause 14.6 as expressed either as an absolute dollar value or a percentage of the market value;

Sub-Licensee means a person who holds a sub-licence of any part of the Premises from the Licensee in accordance with the provisions of this Licence;

Tenant Fixtures means any plant or equipment, fittings or improvements in the nature of fixtures brought onto the Premises by, or on behalf of, or at the request of, the Licensee;

Term means the term of operation of this Licence in relation to the Premises;

Term of Agreement means the figure set out in Column 2 of Item 18, of Schedule 1;

Third Party Exclusive Areas means those areas that are exclusively for the use of third parties as shown on the Plan annexed to each Premises Appendix.

1.2 Authority for grant of Licence

The Licensor warrants that it is the Crown Land Manager responsible for the care, control and management of the Premises under the CLM Act 2016. The Licensor further warrants that it has the power as the Crown Land Manager to grant a Licence of the Premises to the Licensee.

2. This clause has been removed.

3 CONSTRUCTION

3.1 This Licence must be constructed in accordance with this clause unless the context requires otherwise.

3.1.1 Plurals

Words importing the singular include the plural and vice versa.

3.1.2 Gender

Words importing any gender include the other gender.

3.1.3 Persons

A reference to a person includes:

- (a) an individual, a firm, unincorporated association, corporation and a government; and
- (b) the legal personal representatives, successors and assigns of that person.

3.1.4 **Headings**

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing will be ignored in constructing this Licence.

3.1.5 **Clauses and sub-clauses**

- (a) A reference to a clause includes all sub-clauses, paragraphs, sub-paragraphs and other components which form part of the clause referred to; and
- (b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to.

3.1.6 **Time**

A reference to time is a reference to local Sydney time.

3.1.7 **Money**

A reference to \$ or dollars is a reference to the lawful currency of Australia.

3.1.8 **Defined Terms**

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.

3.1.9 **Writing**

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.

3.1.10 **Contra Preferentum**

No rules of construction will apply to the disadvantage of any Party responsible for preparation of this Licence or any part of it.

3.1.11 **Statutes**

A reference to a Statute, Act, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

3.1.12 **Licence**

A reference to this Licence will include any extension or variation of this Licence.

3.1.13 **Priority**

If an inconsistency occurs between the provisions of this Licence and the provisions of a licence granted in accordance with this Licence, the provisions of this Licence will prevail.

3.2 **Warranties and Undertakings**

- (a) The Licensee warrants that it:
 - (i) has relied only on its own inquiries about this Licence; and
 - (ii) has not relied on any representation or warranty by the Licensor or any person acting or seeming to act on the Licensor's behalf.
- (b) The Licensee must comply on time with undertakings given by or on behalf of the Licensee.

3.3 **Further Assurances**

Each Party must do everything necessary to give full effect to this Licence.

3.4 **Relationship of Licensor and Licensee**

Nothing contained or implied in this Licence will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Licensor and the Licensee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Licensee and the Licensor or either of them will be deemed to create any relationship between them other than the relationship of Licensor and Licensee upon the terms and conditions only as provided in this Licence.

3.5 **Time to be of the Essence**

Where in any provision of this Licence a Party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

4 **SEVERABILITY**

Any provision of this Licence which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction, be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

5 **ESSENTIAL CONDITIONS OF LICENCE**

The Licensor and the Licensee agree that the clauses specified in Column 2 of Item 19 of Schedule 1 are essential conditions of this Licence

6 **PERMITTED USE**

6.1 **Grant of Licence**

The Licensor grants to the Licensee a right to occupy the area delineated on the plan annexed to the Premises Appendix **A** for the Permitted Use.

6.2 **Permitted Use only**

The Licensee must not:

- (a) use the Premises;
- (b) or allow them to be used (except pursuant to a Licence lawfully granted by the Licensor),

for any purpose other than the Permitted Use specified or referred to in Column 2 of Item 15 of Schedule 1.

6.3 No exclusive possession

The Licensee acknowledges that this Licence does not confer exclusive possession of the Premises upon the Licensee.

7 COMMENCEMENT OF LICENCE AND TERM

This Licence will commence on the date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 16, of Schedule 1 and subject to clauses 10 and 11 will continue in force until the Expiry Date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 17, of Schedule 1.

8 NO RIGHT TO PURCHASE OR TRANSFER OF LICENCE RIGHTS

8.1 In respect of this Licence, and without limitation, the grant of this Licence does not confer upon the Licensee:

- (a) a right to purchase or lease any part of the Premises; or
- (b) any tenancy or other estate or interest in any part of the Premises other than contractual rights as Licensee under this Licence.

8.2 Subject to any other provisions of this Licence the Licensee must not during the Term of this Licence, sub-licence, part with possession of the Premises, transfer or create any interest in the Licence or authorise or permit any person to occupy the Premises without the prior written consent of the Licensor.

8.3 The parties acknowledge that a change in the Licensee's Minister's name or a change of machinery of government does not constitute an assignment or sublicense or novation of this licence.

9 LICENSEE TO YIELD UP

9.1 The Licensee must forthwith upon the termination of this Licence or any extension of it peaceably vacate the Premises at the Licensee's expense.

9.2 The Licensee must:

- (a) unless otherwise provided for in this Licence, remove all Licensee Fixture/s, signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Licensee (other than a notice displayed by the Licensor); and
- (b) unless otherwise provided for in this Licence, return the Premises as nearly as practicable to the original condition as at the date of the Licensee's occupation, before the installation of the Licensee's Fixtures subject to fair wear and tear, to the reasonable satisfaction of the Licensor; and
- (c) ensure that when it vacates the Premises in relation to its occupation of the Premises under this Licence, the Premises comply with any Environmental Law to the extent applicable at the time of granting of this Licence; and
- (d) leave the Premises in a clean and tidy condition.

- 9.3 Sub-clause 9.2 does not apply unless the Licensor permits the Licensee to carry out any works on the Premises reasonably required in order to comply with that clause.

10 TERMINATION OF LICENCE - S. 3.43 OF CLM ACT 2016 TO APPLY

- 10.1 Without limiting the Licensee's statutory or other rights apart from this Licence, the Parties acknowledge that subject to subclause 10.2 this Licence will terminate under section 3.43 of the CLM Act 2016 if the reservation or dedication over that part of the Reserve that comprises the whole or part of the Premises is revoked, unless the revocation notification otherwise provides.
- 10.2 Where only part of the Premises is affected by the revocation or proposed revocation the Parties undertake to consult to determine if an agreement under section 3.43(2) can be reached for the continuation of this Licence in respect to that part of the Premises not affected by the revocation.
- 10.3 The Licensee expressly acknowledges that as provided by section 3.43(4) of the CLM Act 2016 no compensation will be payable in respect of the Termination of this Licence by the operation of section 3.43.

11 TERMINATION OF LICENCE ON DEFAULT

- 11.1 The Licensor may terminate this Licence in the manner set out below in the following circumstances:
- (a) if the Rent or any part of it or any moneys owing to the Licensor under the Licence is or are in arrears for one month, whether formally demanded or not;
 - (b) if the Licensee breaches an essential condition of this Licence or any rule or regulation made under this Licence;
 - (c) if defects notified under a provision of this Licence are not remedied within the time specified in the notice;
 - (d) if the Licensee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
 - (e) if the Licensee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntarily or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
 - (f) if the Licensee is a company and is placed under official management under corporations law or enters a composition or scheme of arrangement;
 - (g) if the interest the Licensee has under this Licence is taken in execution;
 - (h) if the Licensee or any person claiming through the Licensee conducts any business from the licensed Premises after the Licensee has committed an act of bankruptcy,

provided the Licensor has provided written notice to the Licensee specifying the non-compliance or amount owing and requiring the Licensee to pay or remedy it within 30 days after the notice is given.

- 11.2 In the circumstances set out in sub-clause 11.1 the Licensor may end this Licence by:
- (a) notifying the Licensee that it is ending the Licence; or
 - (b) re-entering the Premises, with force if necessary, and ejecting the Licensee and all other persons from the Premises and repossessing them; or
 - (c) doing both.

- 11.3 If the Licensor ends this Licence under this clause, the Licensee will not be released from liability for any prior breach of this Licence and other remedies available to the Licensor to recover arrears of Rent shall not be prejudiced.
- 11.4 If the Licensor ends this Licence under this clause or the Licence terminates under clause 10, the Licensor may remove the Licensee's property and store it at the Licensee's expense without being liable to the Licensee for trespass, detinue, conversion or negligence. After storing it for at least one month, the Licensor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

12 ACCEPTANCE OF RENT NOT WAIVER

Demand or acceptance of Rent or any other moneys due under this Licence by the Licensor after termination does not operate as a waiver of the termination.

13 HOLDING OVER BY LICENSEE

- (a) At the end of the Term of Agreement as specified in Column 2 of Item 18 of Schedule 1, the Licensee will be entitled with the consent of the Licensor to remain in possession of the Premises on the following terms and conditions:
- (i) the Licensee will become a monthly tenant of the Licensor at a monthly rental equivalent to one twelfth proportion of the annual Rent payable at the time of expiration or sooner determination of this Licence;
 - (ii) the Licensee must comply with and be bound by the terms and conditions of this Licence insofar as the terms and conditions are applicable, provided that the Licensor may from time to time by notice in writing served on the Licensee direct that any particular condition not apply or be amended in the manner set out in the notice.
- (b) The Licensor and the Licensee expressly agree that where any provision of this Licence confers any right, duty, power or obligation on a Party upon the expiration or determination of this Licence or on the Expiry Date and the Licensee is authorised to remain in possession of the Premises pursuant to a consent granted under this clause the emergence of the right, duty, power or obligation shall be postponed until such time as the Licensee ceases to be entitled to possession pursuant to this clause.
- (c) The tenancy created by operation of this clause may be determined by the Licensor serving on the Licensee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.
- (d) The tenancy created by operation of this clause may be determined by the Licensee serving on the Licensor a notice stating that as from a date specified in the notice the tenancy is surrendered.

14 LICENSEE'S RENT AND OUTGOINGS

14.1 Licensee to Pay Rent

The Licensee covenants with the Licensor that the Licensee must, during the whole of the Term of Agreement and any extension of it, pay the Rent to the Licensor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever.

14.2 Goods and Services Tax

- (a) The Parties agree that all payments to be made and other consideration to be provided by the Licensee under the Licence are GST exclusive unless explicitly expressed otherwise. If any payment or consideration to be made or provided by the Licensee to the Licensor is for a taxable supply under the Licence on which the Licensor must pay GST and the Licensor gives the Licensee a tax invoice, the Licensee must pay to the Licensor an amount equal to the GST payable ("the GST Amount") by the Licensor for that taxable supply upon receipt of that tax invoice.
- (b) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount shall not include any amount incurred in respect of penalty or interest or any other amounts payable by the Licensor as a result of default by the Licensor in complying with the GST Law.

14.3 Rent and Adjusted Rent

The Licensee must pay to the Licensor on the Commencement Date the Initial Rent and thereafter must pay on each Due Date, Rent in advance adjusted as provided in sub-clauses 14.4 and 14.5.

14.4 Calculation of Annual Rental Adjustment

- (a) On each anniversary of the Due Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where:

- R represents the Base Annual Rent following adjustment under this clause;
 - B represents the Base Annual Rent before adjustment under this clause;
 - C represents the Consumer Price Index Number for the last quarter for which such a number was published before the Due Date; and
 - D represents the Consumer Price Index Number for the last quarter of the last adjustment of Rent for which such a number was published.
- (b) In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
 - (c) Any Rent adjusted under this sub-clause shall be adjusted to the nearest whole dollar.
 - (d) An adjustment of Rent made under this clause shall take effect on its Due Date, notwithstanding that any Rent notice to the Licensee is not issued until after that date specified or referred to in Column 2 of Item 6 of Schedule 1.

14.5 Market Rent Review

- (a) In addition to the Rent adjustment provided for in clause 14.4 the Rent may, subject to the following provisions of this clause, be redetermined to an amount

- that is the Market Rent in accordance with Division 6.3 of the CLM Act 2016 on that date with effect on and from each Market Rent Review Date by the Licensor;
- (b) A redetermination of Rent for the purposes of sub-clause 14.5(a) will be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before and up to six months after that Market Rent Review Date specified or referred to in Column 2 of Item 8 of Schedule 1.
 - (c) Where the Licensor does not redetermine the Rent as provided for in sub-clause 14.5(a) it may subsequently redetermine the Rent at any time before the next Market Rent Review Date. No succeeding Market Rent Review Date shall be postponed by reason of the operation of this clause.
 - (d) A redetermination of Rent made under sub-clause 14.5(a) or 14.5(c) will take effect and be due and payable on the next Due Date following the date of issue of the notice of redetermination (or where the said Due Date and the date of issue of the notice of redetermination are the same, then that date) even if the Licensee wishes to dispute the redetermination.

14.6 Rebate for Charitable or Non Profit Organisations

- (a) At the absolute discretion of the Licensor, the Licensor may determine that the Licensee is entitled to a Rent Rebate on the basis that the Licensee is a recognised charitable or non-profit organisation;
- (b) Subject to sub-clause 14.6(a), the Rent is calculated by subtracting the Rent Rebate from the Base Annual Rent, but the Rent must exceed the statutory minimum rental applicable to tenures under the CLM Act;
- (c) Where the Licensee is not entitled to a Rent Rebate, the Base Annual Rent applies.

15 CONTINUING OBLIGATION

The obligation of the Licensee to pay Rent is a continuing obligation during the Term of Agreement and any extension of it and shall not abate in whole or in part or be affected by any cause whatsoever.

16 NO REDUCTION IN RENT

Subject to this Licence the Licensee must not without the written consent of the Licensor by any act, matter or deed or by failure or omission impair, reduce or diminish directly or indirectly the Rent reserved or imposed by this Licence. However, if at any time during the Licence:

- (a) some natural disaster or other serious event occurs which is beyond the reasonable control of the Licensee; and
 - (b) as a result of the damage caused by the natural disaster or other serious event, the Licensee is not able to use the Premises in a reasonable manner,
- the Licensee's obligations to pay Rent will abate to the extent proportional to the effect on the Licensee's ability to occupy and use the Premises until the Premises are restored to a condition in which the Licensee is able to conduct the Licensee's activities and/or occupy the Premises in a reasonable manner.

17 – 19 Clauses Removed

20 LICENSEE TO PAY COST OF WORK

Whenever the Licensee is required under this Licence to do or effect any act, matter or thing then the doing of such act matter or thing shall unless this Licence otherwise provides be at the sole risk, cost and expense of the Licensee.

21 COSTS PAYABLE BY LICENSEE TO LICENSOR

Except when law limits costs being recovered from a Licensor by a Licensee, the Licensee must pay in full the Licensor's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Licensor in connection with :

- (a) clause removed.
- (b) any variation of this Licence made otherwise than at the request of the Licensor;
- (c) any application for the consent of the Licensor and the Minister if applicable under this Licence;
- (d) Clause removed.
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Licensor under or by virtue of this Licence;
- (f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Licensee and the inspection of it, in this case the costs to be mutually agreed.

22 COSTS PAYABLE BY LICENSOR

The Licensor must pay its own direct and external consultant costs in relation to any rental redetermination matter without reimbursement from the Licensee.

23 INTEREST ON OVERDUE MONEYS

The Licensee must pay interest to the Licensor on any moneys 30 days overdue and payable under this Licence or on any judgment in favour of the Licensor in an action arising from this Licence until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Licensor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest shall accrue and be calculated daily.

24 MANNER OF PAYMENT OF RENT AND OTHER MONEYS

The Rent and other moneys payable in accordance with this Licence must be paid to the address or bank account specified in Column 2 of Item 9, of Schedule 1 or to such other person or at such other address as the Licensor may from time to time direct by notice in writing served on the Licensee.

25 OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES

25.1 Access

Subject to the sub-clauses hereunder the Licensor confirms that the Licensee will have unfettered and free access to and from the Premises at all times, provided however that:

- (a) The Licensee must strictly observe the reasonable directions and requirements of the Licensor at all times regarding the methods and routes of access to the Premises taken by the Licensee;
- (b) If the Licensee has shown the position of its intended access on the Access Plan via Boomerang Street and Park Street as set out in the Premises Plan and described the nature of the activity to be conducted on the land at those positions, then in respect of that access, the Licensor will not require further notice;
- (c) The Licensee as far as is practicable, must use existing access tracks to, from, within and surrounding the Premises;

25.2 Entry by the Public

The Licensee must allow the public to have right of access over that part of the Premises as specified in Column 2 of Item 20, of Schedule 1 and any such part of the Premises shall be suitably signposted. Otherwise the Licensee may prohibit unauthorised entry to the remainder of the Premises. If required by the Licensor plans showing the areas where public access is authorised and unauthorised shall be displayed in a prominent location at the entrance to the Premises.

25.3 Additions and Alterations

The Licensee shall not make any major additions or alterations to the Premises without first obtaining the written consent of the Licensor, the Minister (unless it has been deemed to have been given under section 2.23 of the CLM Act 2016) and any development consent required under the *Environmental Planning & Assessment Act 1979*. Any additions or alterations consented to by the Licensor and the Minister shall be carried out at the Licensee's expense.

25.4 Maintenance of Premises and Enclosed Areas

The Licensee must keep the part of the Premises used as a Kiss and Drop zone clean and tidy and in good order and condition subject to fair wear and tear.

25.5 Licensee to erect barricades etc

Where the Premises or any part of the Premises become to the knowledge of the Licensee (or which ought reasonably to be in the knowledge of the Licensee) unsafe, hazardous or dangerous the Licensee shall forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

25.6 No residence on Premises

The Licensee must not reside or permit any other person to reside on the Premises, unless Schedule 2, Special Conditions, permit otherwise.

25.7 Licensee not to remove materials

- (a) The Licensee must not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Licensor and the Minister and subject to such conditions as the Licensor or the Minister may determine.

- (b) Sub-clause 25.7(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any Improvement authorised by or under this Licence provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.

25.8 Licensee not to burn off

The Licensee must not carry out any burning off on the Premises except with the prior consent of the Licensor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the *Rural Fires Act 1997*. Any consent granted in accordance with this clause shall be subject to such reasonable conditions as the Licensor may impose.

25.9 Rodents and Vermin

The Licensee must take all reasonable precautions to keep the part of the Premises used as a Kiss and Drop zone free of rodents, vermin, insects and pests and shall in the event of failing to do so if required by the Licensor employ from time to time a duly certified pest exterminator at cost of the Licensee and as approved by the Licensor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Licensee and any one acting on the Licensee's behalf shall not use any substance or undertake any activity prohibited by any legislation.

26 ADVERTISING

- (a) The Licensee must not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice not compliant with the Licensee's branding, while the Licensee is the Minister of Education and Early Learning or any other related entity (ABN 40 300 173 822), without first obtaining the Licensor's written consent other than safety signs, in respect of which the Licensor's consent shall not be required; and
- (b) The Licensor may at any time by notice in writing require the Licensee to discontinue to use any piece or mode of advertising to which the Licensor has granted consent under sub-clause 26(a) which in the reasonable opinion of the Licensor has ceased to be suitable or has become unsightly or objectionable and the Licensee on receipt of the notice shall comply accordingly.

27 NOTIFICATION OF ACCIDENT

The Licensee must give to the Licensor prompt notice in writing of any serious accident or serious defect at or in the Premises or any part of them unless the defect or accident is capable of being and is promptly remedied by the Licensee.

28 LICENSEE NOT TO COMMIT NUISANCE ETC

The Licensee must use reasonable endeavours to not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) carry on or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Licensor or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the Premises for any illegal activity.

29 HAZARDOUS SUBSTANCES

The Licensee must not keep any Hazardous Substance on the Premises without prior consent of the Licensor, which consent shall not be unreasonably withheld.

30 RELICS

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974* and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Licensee must not knowingly disturb, destroy, deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and shall take every reasonable precaution in drilling excavating or carrying out other operations or works in the Premises against any such disturbance, destruction, defacement or damage.
- (b) If the Licensee becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises the Licensee must within 24 hours notify the Licensor and the Chief Executive of the Office of Environment and Heritage of the existence of such relic place or item.
- (c) The Licensee must not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in sub- clause 30(b) without the approval of the Chief Executive of the Office of Environment and Heritage and the Licensee shall observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

31 ARTEFACTS

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Licensor and the Licensee must as authorised by the Licensor watch or examine any excavations and the Licensee must take all reasonable precautions to prevent such articles or things being removed or damaged and shall as soon as practicable after discovery thereof notify the Licensor of such discovery and carry out the Licensor's orders as to the delivery up to or disposal of such articles or things at the Licensor's expense.

32 OWNERSHIP AND REMOVAL OF TENANT FIXTURES AND IMPROVEMENTS

- (a) During the Term of Agreement and any extension of it, ownership of Tenant Fixtures vests in the Licensee. Notwithstanding anything contained in this Licence, so long as any Rent or other moneys are due by the Licensee to the Licensor or if the Licensee has committed any breach of this Licence which has not been made good or remedied and whether the Licensee is still in possession or not, the Licensee shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the Licensed property.
- (b) Upon expiry of the Licence all Improvements undertaken by the Licensee become the property of the Licensor.

33 GENERAL REQUIREMENT TO REPAIR

Without prejudice to the specific obligations contained in this Licence the Licensee must to the satisfaction of the Licensor at all times keep the part of the Premises used as a Kiss and Drop zone in good repair and properly maintained in all respects.

34 Clause removed.

35 INDEMNITIES AND INSURANCE

35.1 Indemnity for use of Premises

(a) The Licensee indemnifies and keeps indemnified the Licensor from and against all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever to which the Licensor becomes liable for or in respect of the Licensee's misuse of the Premises or for or in respect of all losses, damages, accidents or injuries of whatsoever nature or kind and howsoever sustained or occasioned (and whether to any property or to any person or resulting in the destruction of any property or the death of any person or not) at or upon the Premises except to the extent that any such claims and demands:

- (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Licensor; or
- (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of another occupier.

35.2 Limits on Indemnity

Any indemnity given by the Licensee under this Licence:

- (a) is limited to direct loss;
- (b) does not apply to the extent the claim is caused by the act, omission or negligence of the Licensor or the Licensor's Associates; and
- (c) is subject to an overriding obligation on the part of the Licensor to mitigate any loss it suffers as a result of the claim.

35.3 Exclusion of Consequential Loss

Despite any other provision of this Licence, both Parties exclude, and agree that they will have no rights against the other for liability for consequential or indirect loss arising out of this Licence including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

36 INSURANCE - PUBLIC RISK

The Licensor acknowledges and agrees that whilst the Licensee is Minister for Education and Early Learning (ABN 40 300 173 822), the insurance cover pursuant to this clause 36 will be provided by the NSW Treasuring Managed Fund.

The Licensee must effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance for an

amount not less than the amount set out in Column 2 of Item 12, of Schedule 1 or such other amount as the Licensor may from time to time reasonably require as the amount payable in respect of liability arising out of any one single accident or event. The Licensor acknowledges that the Licensee may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

37 PROVISIONS RE POLICIES

- (a) All insurance policies required to be effected by the Licensee pursuant to this Licence are specified in Schedule 2, Special Conditions and shall be in place prior to the Licensee occupying the Premises.
- (b) The Licensee must produce to the Licensor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Licensee pursuant to this Licence.
- (c) The Licensee must not at any time during the Term of Agreement do or bring upon the Premises anything which it ought reasonably believe may render void or voidable any policy of insurance. If the Licensee brings anything onto the Premises whereby the rate of premium on such insurance is liable to be increased, the Licensee must obtain insurance cover for such increased risk and pay all additional premiums on the Premises required on account of the additional risk caused by the use to which the Premises are put by the Licensee.
- (d) The Licensee must use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

38 INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION

The Licensee indemnifies and keeps indemnified the Licensor from and against any and all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever arising from the non-compliance by the Licensee with any New South Wales or Commonwealth legislation that may apply to the Licensee's use, occupation of and access to the site and the Licensee's operation of their business from and access to the site.

This clause does not merge on the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

39 INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW

Subject to clause 35.2 and without prejudice to any other indemnity granted by this Licence, the Licensee indemnifies and keeps the Licensor indemnified against all claims whatsoever arising from a breach by the Licensee of clause 45.3(b) of this Licence which breach is in relation to the Licensee's specific use of the Premises. This clause shall not merge on expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

40 NO LIABILITY FOR FAILURE OF SERVICES

The Licensor is not liable for any loss, injury or damage sustained by the Licensee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Licensor or enjoyed by the Licensee in conjunction with the Premises or this Licence provided that such failure is not due to the negligent or wilful act or omission of the Licensor its servants or agents.

41 Clause Removed

42 RELEASE OF LICENSOR FROM LIABILITY

- (a) The Licensee occupies, uses and keeps the Premises at the risk of the Licensee and hereby releases to the full extent permitted by law the Licensor from all claims and demands of every kind resulting from any accident, damage or injury occurring therein but excluding such claims and demands to the extent that such claims and demands arise out of the negligent or wilful acts omissions or default of the Licensor. The Licensor has no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Licensee or any agent or servant of the Licensee or of any member of the public whilst in or upon the Premises (but excluding such loss or damage claims and demands to the extent that such loss or damage, claims and demands arise out of the negligent acts or wilful omissions or default of the Licensor).
- (b) The obligations of the Licensee under this clause continue after the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination for which the Licensee is responsible. Such obligation is to be governed by the Statute of Limitations.

43 LICENSOR'S WARRANTIES AND COVENANTS

43.1 Hazardous Chemicals

The Licensor warrants that it has not received any notices pursuant to the *Contaminated Land Management Act 1997* (NSW).

44 LICENSOR'S POWERS AND FUNCTIONS

44.1 Approval by Licensor

- (a) In any case where pursuant to this Licence the doing or executing of any act, matter or thing by the Licensee is dependent upon the approval or consent of the Licensor such approval or consent is not effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Licensor and may be given subject to such conditions as the Licensor may determine unless otherwise provided in this Licence provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.
- (b) Any failure by the Licensee to comply with a condition imposed by the Licensor pursuant to sub-clause 44.1(a) constitutes a failure by the Licensee to comply with a condition of this Licence.

45 APPLICATION OF CERTAIN STATE AND COMMONWEALTH LAWS

45.1 Proportionate Liability

Part 4 of the Civil Liability Act 2002 (NSW) does not apply to this Licence.

45.2 Licensee to Comply with all Commonwealth and NSW State Laws

- (a) The Licensee must comply with the requirements of all Statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Licensee is bound at law to comply with the same and nothing in this Licence affects this obligation.

45.3(a) Licensor to Comply with Environmental Laws

The Licensor warrants that:

- (a) as at the Commencement Date and during the term, the Premises and Land are fit for use and occupation;
- (b) the Premises and any land affecting the Premises are free from Hazardous Substance; and
- (c) the Licensor has complied and will continue to comply with all obligations imposed on the Licensor by or under any Environmental Law affecting the Land and Premises.

45.3(b) Licensee to Comply with Environmental Laws in relation to the Permitted Use

In relation to its use of the Premises, the Licensee shall, during the Term of Agreement, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Licensor as soon as reasonably practicable details of notices received by or proceedings commenced against the Licensor pursuant to an Environmental Law:
 - (i) relating to a breach or alleged breach by the Licensee of an Environmental Law; or
 - (ii) requiring the Licensor to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

45.4 Licensee's Failure to Comply with Statutory Requirements

Where the Licensee breaches any law in relation to its use of the Premises it is taken to breach a condition of the Licence, provided that:

- (a) the Licensee has been found guilty of the breach, and
- (b) the Licensor determines that the breach warrants the Termination of the Licence.

46 NOTICES

46.1 Service of Notice on Licensee

Any notice served by the Licensor on the Licensee must be in writing and is sufficiently served if directed to the Director Property Portfolio, School Infrastructure NSW and:

- (a) *clause removed*
- (b) sent by email to the Licensee's email addresses stated in Column 2 of Item 10, of Schedule 1 or such other address as the Licensee notifies in writing to the Licensor;

and every such notice must also be served on the Licensee's solicitors as they may be nominated from time to time, or such other address as the Licensee's solicitors notify in writing to the Licensor, by any methods identified in subclauses 46.1 (a) and (b).

46.2 Service of Notice on Licensor

Any notice served by the Licensee on the Licensor must be in writing and is sufficiently served if:

- (a) served personally or left addressed to the Licensor at the address stated in Column 2 of Item 11, of Schedule 1 or such other address as the Licensor notifies in writing to the Licensee; or
- (b) sent by email to the Licensor's email address stated in Column 2 of Item 11, of Schedule 1 or such other address as the Licensor notifies in writing to the Licensee;
- (c) forwarded by prepaid security mail addressed to the Licensor at the address stated in Column 2 of Item 11, of Schedule 1

and every such notice must also be served on the Licensor's solicitors, as they may be nominated from time to time, or such other address as the Licensor's solicitors notify in writing to the Licensee, by any methods identified in subclauses 46.2 (a) and (b).

46.3 Notices

- (a) Any notice served by the Licensor or the Licensee under this Licence is effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Licensor or by the Licensee to the other.
- (b) Any notice sent by prepaid security mail is deemed to be served at the expiration of the 4th Business Day after the date of posting.
- (c) Any notice sent by email is deemed to be served if sent on the day the notice was sent provided that the notice was sent by 5:00pm on that day and that day is a Business Day. Otherwise, the communication will take effect from the next Business Day.
- (d) Any notice delivered by hand when delivered to the nominated address.

46.4 Licensee shutdown period

The Licensor acknowledges that:

- (a) the Licensee shuts down for general business over the end of year / new year period; and

- (b) that December and January are peak periods for the Licensee in preparation for the new school year,

and accordingly that, while the Licensee will endeavour to respond to any correspondence or other notice received from the Licensor during these periods, the Licensee's response may be delayed.

47 PROCEDURE - DISPUTE RESOLUTION

- (a) In the event that the Licensor and the Licensee are in dispute regarding any matter relating to or arising under this Licence or in respect of any approvals or consents to be granted by the Licensor (except those approvals or consents where the Licensor has an obligation to act reasonably) to the Licensee hereunder or where it is acting in its statutory capacity, then either the Licensor or the Licensee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notification, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Licence.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 47(d).
- (g) Notwithstanding the existence of a dispute under this or any other clause of this Licence the Parties must, unless acting in accordance with an express provision of this Licence, continue to perform their obligations under this Licence.

MISCELLANEOUS

48 NO MORATORIUM

Any present or future legislation which operates to vary obligations between the Licensee and the Licensor, except to the extent that such legislation is expressly accepted to apply to this Licence or that its exclusion is prohibited, is excluded from this Licence.

49 NO WAIVER

No waiver by a Party of any breach of any covenant obligation or provision in this Licence either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Licence contained or implied. None of the provisions of this Licence shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

50 NO MERGER

Nothing in this Licence merges, postpones, extinguishes lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Licence or under any other agreement.

51 COUNTERPARTS

- (a) A Party may execute this Licence by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

52 CONTACT PERSON

The Licensor and the Licensee each must nominate a person to contact about matters arising under this Licence. The person so nominated is the person referred to in Column 2 of Items 13 and 14, of Schedule 1 or such other person as the Licensor nominates in writing to the Licensee and the Licensee nominates in writing to the Licensor from time to time.

53 APPLICABLE LAW

This Licence shall be construed and interpreted in accordance with the law of New South Wales.

54 NO HOLDING OUT

- (a) The Licensee must not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Licensor.
- (b) The Licensee must not act as or represent itself to be the servant or agent of the Licensor.

55 WHOLE AGREEMENT

- (a) The provisions contained in this Licence expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Licence or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Licence.
- (c) The existence of any such implication or collateral or other agreement is hereby negated.

56 SPECIAL CONDITIONS

The Special Conditions set out in Schedule 2 apply and form part of this Licence.

57 CHILD PROTECTION

[DoE Note: Given DoE is licensing council land for the purpose of the transportation of school students being a kiss and drop zone, under child protection laws, we must comply with CP Acts. Hence, we are required to include this child protection clause which requires that council personnel (employees, contractors, and visitors) who have contact with children for the purposes of this licence will need a WWCC and we have rights to exclude them for the protection of children, if they are not a fit and proper person under such laws.]

(a) Adoption of terms defined in CP Acts

In this clause words and phrases that are defined in the CP Acts shall be interpreted as specified in the relevant CP Act.

(b) Comply with CP Acts

The Licensor must observe and comply with the provisions of the CP Acts and any other ancillary legislation including:

- (i) ensuring compliance with the CP Acts by the Licensee' authorised officers and Personnel at the Premises;
- (ii) obtaining a Working With Children Check for all authorised officers of the Licensor and any Personnel engaged by the Licensor for any purpose related to this licence involving contact with children;
- (iii) mandatory reporting where necessary under section 27 of the CYPCP Act or any other applicable legislation; and
- (iv) not employing, or continuing the employment of, a prohibited person (as defined in the CP Acts).

(c) Working With Children Check

The Working With Children Check specified in clause 57(b) must be carried out by the Licensor.

(d) Provision of results and Personnel at the Premises

The Licensor must promptly provide to the Licensee the result of each Working With Children Check specified in clause 57(b) and in any event, before any authorised officers or Personnel occupy or attend at the Premises, ensuring that only those authorised officers and Personnel with a valid Working With Children Check are permitted to be on the Premises at all times. If any authorised officer or Personnel (even with a valid Working with Children Check) is alleged to have engaged in misconduct with child protection concerns, as a precaution, that authorised officer or Personnel is to immediately leave the Premises and is not permitted to be present at the Premises until they are cleared of the allegations.

(e) **Evidence of compliance**

The Licensor must, when reasonably requested by the Licensee, provide to the Licensee either or both of the following:

- (i) a statutory declaration from an authorised officer of the Licensor declaring that the Licensor has complied with clause 57(b) and has caused each of its Personnel to comply with clause 57(b); and
- (ii) a copy of the Working With Children Check for all authorised officers of the Licensor and any Personnel engaged by the Licensor for any purpose related to this licence involving contact with children, as required by clause 57(f)(i).

(f) **Licensee may exclude any person**

- (i) The Licensee may in its absolute discretion notify the Licensor that any Personnel of the Licensor is, from the date of that notice, to be excluded from the Land, including the Premises for reasons of not being a fit and proper person.
- (ii) If clause 57(f)(i) applies the Licensor must not further permit that person to enter upon the Premises.
- (iii) For the purposes of clause 57(f)(i), a member of the Licensor's Personnel is not a fit and proper person if the Licensor knows or has reasonable cause to believe (after having taken reasonable steps to investigate) that the Licensor's Personnel has been convicted of an offence, or subject to a finding of guilt for an offence or a finding that the charge for an offence is proven, where the offence was committed as an adult in NSW or elsewhere and was an offence of the kind set out below:
 - (A) a crime against a child; or
 - (B) any of the offences listed below:
 - (1) sexual assault or intercourse offence;
 - (2) the common the common law offence of rape or attempted rape;
 - (3) an indecent assault offence;
 - (4) a sexual servitude offence;
 - (5) observing a person engaged in a private act, for the purpose of obtaining sexual arousal or sexual gratification (voyeurism);
 - (6) filming another person engaged in a private act or filming another person's private parts, for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification;

- (7) installing a device, or constructing or adapting the fabric of a building, for the purpose of facilitating the observation or filming of a child, with the intention of enabling any person to commit an offence referred to at (D)-(E) above;
- (8) murder of a child;
- (9) manslaughter of a child (other than as a result of a motor vehicle accident);
- (10) intentional wounding or causing grievous bodily harm to a child who was three or more years younger than the Licensee's Associate;
- (11) a child prostitution offence;
- (12) an offence involving an act of indecency with or towards a child;
- (13) procuring or grooming a child under 16 years of age for unlawful sexual activity;
- (14) using a child for the production of child abuse material, or producing, disseminating, possessing or importing child abuse material;
- (15) possessing or importing child pornography;
- (16) offences relating to the use of a postal or similar service for child pornography material or child abuse material;
- (17) offences relating to the use of a postal or similar service involving sexually activity with a child under 16 years of age;
- (18) publishing indecent articles;
- (19) an offence of kidnapping a child, unless a parent or carer of the child at the time of the offence;
- (20) a forced labour or deceptive recruiting for labour or services offence, where the victim was a child;
- (21) intentional or reckless infliction of grievous bodily harm on a child, during or after the delivery of the child;
- (22) intentionally abandoning or exposing a child under the age of seven;
- (23) bestiality;
- (24) an offence an element of which is an intention to commit one of the above offences; or

- (25) an offence of attempting, or of conspiracy or incitement, to commit one of the above offences.

(g) **Notify Police**

The Licensee must notify the Police if the Licensee becomes aware an allegation has been made against one of the Licensee's Associates of a crime against a child or any of the offences listed in clause 57(f)(iii).

(h) **Notification to Licensee**

The Licensor must notify the Licensee within 1 working day when it becomes aware an allegation, a charge by the Police, or a conviction by a court has been made against one of the Licensee's Associates of a crime against a child or any of the offences listed in 57(f)(iii).

(i) **Definitions**

For the purposes of this clause:

- (i) **CP Acts** means the Child Protection (Working with Children) Act 2012 (NSW) and the Children and Young Persons (Care and Protection) Act 1998 (NSW).
- (ii) **Personnel** of a person includes that person's employee, agent, officer, or contractor. A reference to the Licensor's Personnel includes any volunteer engaged by the Licensor or any invitee of the Licensor to the Premises or the Land.

SCHEDULE 1

Item	Clause	Column 1	Column 2
1	2	Licensor	Blayney Shire Council as Crown Land Manager for Unnamed Reserve R.29953
2	2	Licensee	Minister for Education and Early Learning
3	2	Market Rent	\$8,277 p.a. including GST
4	2	Rent Rebate	\$7,655 including GST
5	2	Initial Rent	\$622 p.a. including GST
6	2	Due Date	1 January 2026 and each anniversary of this date in each year of the Term of Agreement.
7	14.4	Annual Rental Adjustment	12 months from commencement and annually thereafter where agreement is greater than 12 months
8	14.5	Market Rent Review Date	N/A
9	24	Address for Payment of Rent	PO Box 62, Blayney. NSW 2799.
10	46.1	Licensee's address for Service of Notices	Level 8, 259 George Street, Sydney Email: [REDACTED]
11	46.2	Licensor's address for Service of Notices	Blayney Shire Council PO Box 62, Blayney. NSW 2799] Phone: 6368 2104 Email: council@blayney.nsw.gov.au
12	36	Public Risk Insurance amount	\$20 Million
13	52	Licensor's Contact Person	Director Corporate Services Telephone: 6368 2104 Email: council@blayney.nsw.gov.au
14	52	Licensee's Contact Person	Manager Property Portfolio
15	6	Permitted Use	Car parking including a Kiss and Drop zone.

16	7	Commencement Date	1 January 2026
17	7	Expiry Date	31 December 2047
18	2	Term of Agreement	21 year
19	5	Essential Conditions of Licence	Clauses 6.2, 6.3, 8, 14, 35, 36, 37, 38,39, 41, 42, 45.2, 45.3,
20	25.2	Entry by the public	N/A

End of Schedule 1

Schedule 2 Special Conditions

- (a) Where Council receives a booking for exclusive use of Redmond Oval the Council will serve at least 4 weeks' notice on the licensee who will refrain using area for duration of booking.
- (b) Where Council is required to undertake works and requires exclusive use of Redmond Oval or the licence area, the Council will serve at least 4 weeks' notice on the licensee who will refrain using the area for the duration of booking.

Dated this _____ day of _____, **20**

Minister for Education and Early Learning
(ABN 40 300 173 822) was affixed in the
presence of:

Blayney Shire Council as Crown Land
Manager for Unnamed Reserve
R.29953

Signature

First Signatory

Print Name

Print Name

Office Held

Office Held

SIGNED BY THE LICENSEE in the
presence of

Second Signatory

Signature of Witness

Print Name

Print Name

Office Held

[

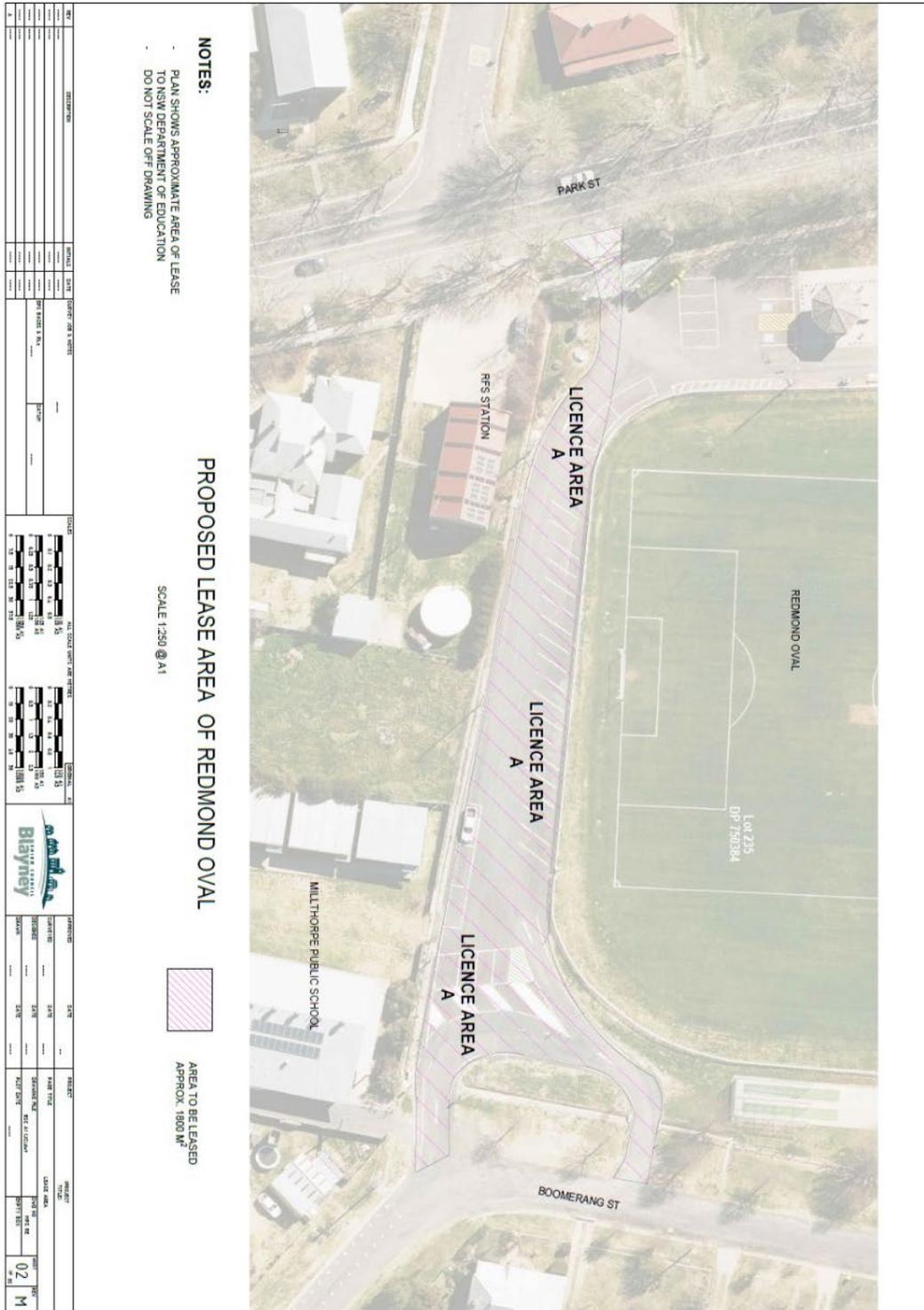
PREMISES APPENDIX

THIS IS A PREMISES APPENDIX REFERRED TO AND DEFINED IN THE LICENCE AGREEMENT BETWEEN THE BLAYNEY SHIRE COUNCIL AS CROWN LAND MANAGER FOR UNNAMED RESERVE R.29953 AND MINISTER FOR EDUCATION AND EARLY LEARNING (ABN 40 300 173 822). IN ACCORDANCE WITH THE PROVISIONS OF THE LOCAL GOVERNMENT ACT 1993 AND CLM ACT 2016 FOR THE PERMITTED USE OF RECREATION, THIS PREMISES APPENDIX VARIES AND FORMS PART OF THE LICENCE AND ITS TERMS ARE INCORPORATED IN THEIR ENTIRETY INTO THE LICENCE

Description of Licence Premises:

Reserve Number	Part – R.29953
Parish	Graham
County	Bathurst
Locality	Millthorpe
Lot in Deposited Plan	Part Lot 235 DP750384
Area of licence	1,800 m ²
Commencement Date	<i>1 January 2026</i>
Expiry Date	<i>31 December 2047</i>
Initial Rent	\$ 622
Plan	Plan attached and marked as “Appendix A”
Description of any structures	N/A
Third Party Exclusive Area	N/A
Enclosed Area <i>(where land is, or is intended to be fenced)</i>	N/A

Appendix "A"





Street Tree Policy

Policy	25L
Officer Responsible	Director Infrastructure Services
Last Review Date	14/02/2023

Strategic Policy

INTRODUCTION

Trees perform many functions. Culturally, they contribute to the character of an area and add a sense of life and place. They instil a sense of community pride in residents and can even calm and inspire. Environmentally, they provide natural air conditioning, shade, habitat for native wildlife, soil restoration and shelter against noise and wind. Aesthetically, they add natural beauty and provide a necessary softening of the built environment.

Blayney Shire Council recognises the importance of trees and their role as a key contributor to a high quality urban environment. We are committed to maintaining the trees we have, improving their maintenance and protection and increasing the level of tree canopy cover by:

- acknowledging trees as vital urban infrastructure in our policy and strategic planning documents;
- emphasising the economic and financial benefits of trees to the community, staff, and developers;
- ensuring there is no net loss of urban canopy cover by increasing the number of trees planted;
- protecting trees potentially affected by development through regulated conditions and controls;
- educating and promoting the community of the benefits of trees;
- encouraging more planting through community awareness and special projects;
- planting, maintaining, protecting, and ultimately removing and replacing trees sustainably and systematically in line with Council policies and strategies.

POLICY STATEMENT

Blayney Shire Council:

- Recognises the significance of trees within the urban setting in terms of creating functional and aesthetic streetscapes and reserves and has the responsibility for the planning, establishment, care, control, and maintenance of all Council tree's and;
- Will plan for urban enhancement through the retention of suitable trees within proposed road reservations and public reserves.

SCOPE

The Policy applies to all trees that are owned or managed by the Council, such trees shall be referred to as the Council's trees. A Council tree includes any tree which has a majority equal to, or greater than 50% of its trunk growing from Council managed land. Council officers, residents/owners, builders, developers, contractors, representatives, and event organisers are all required to comply with this Policy.

BACKGROUND

The purpose of this Policy is to provide a framework for the development of high quality streetscapes that require minimal resource input, thereby increasing environmental values. The Policy will assist the Council in moving toward a greener, more liveable urban setting by increasing tree numbers and ultimately canopy coverage.

OBJECTIVES

To provide guidelines that assist Council and Council staff to comply with the *Best Practice Manual – Trees and Tree Roots* developed by Statewide Mutual.

To establish a framework and guidelines that assist in the development of a tree management program and enhance the aesthetics, the public amenity and safety of trees in public open space and minimise the exposure to public liability.

To provide a systematic procedure for the determination of appropriate tree species for specific planting locations on Council owned and maintained lands.

Strategic Direction

The Street Tree Policy is presented in the following key areas:

- Tree Protection
- Tree Planting
- Tree Management and Maintenance
- Tree Roots and Infrastructure
- Tree Removal
- Community Engagement

CONSULTATION WITH STAKEHOLDERS

The Council values its stakeholder's opinion and encourages consultation and communication in the improvement of its streetscape. In accordance with the Council's Community Engagement Policy's Key Values and Principles; namely:

- Encouraging participation of people who live, work, visit or support the Council and;
- Ensuring relevant information is readily available and that is accurate, comprehensive, and easy to understand.

The Council will apply the following practices:

- Internal consultation with the Council's relevant service units;
- Increase resident involvement in the ongoing care of its streets and reserves by hosting community planting events;
- Inform affected residents of street tree plantings and removals through various mediums;
- Encourage community consultation in programmed street tree plantings and removals by providing opportunities to comment; and

- Raise community knowledge about the benefits of trees and the place they have in our streetscapes through information leaflets, the Council's web-page, social and local media

GENERAL

Tree Selection

When planting trees, the species and proposed location shall be considered in relation to existing services and structures, to ensure that Council's exposure to public liability claims in streets, parks and reserves under Council's control is minimised.

Council staff shall initially assess each site and refer to the preferred species list provided in the guidelines.

It is recognised that the species list will evolve over time, due to the dynamic nature of the horticulture industry, and the development of new cultivars and hybrids.

Trees located in an established "avenue" will be replaced with the same species where possible.

Tree Planting

Blayney Shire Council shall endeavour to plant a street tree outside each property zoned residential or rural residential within the Blayney Shire Council Local Government Area (LGA). When considering plantings council shall ensure minimal conflict with car parking spaces, driveway access points and potential traffic / pedestrian conflicts.

The planting of any tree or other plant by any person on public open space is prohibited without the written approval of Council.

Tree Maintenance

Council will maintain existing trees in a sound and healthy condition and where necessary, undertake pruning or removal of the tree to minimise public liability exposure in streets, parks or reserves resulting from Council trees.

The Street Tree Policy establishes a framework and guidelines to assist in developing tree management programs that will enable the creation of an ideal streetscape environment by enhancing the aesthetics, public amenity, and safety of trees in public open space and minimise Council's exposure to public liability. The Policy formalises current street tree management practices.

Tree Protection

Trees must be protected from construction works and other activities that threaten their health and stability. Council will ensure all construction, works, events and development activities in proximity to trees shown on endorsed plans to be retained must abide by the following:

- All strategic, development and construction work within the Shire is required to consider existing trees in the early stages of planning and design of the project to ensure protection in accordance with Australian Standard 4970 *Protection of Trees on Development Sites*;
- Removal of trees will not occur unless approved by Blayney Shire Council delegate and be consistent with the removal criteria within this policy;
- During all construction and development works, existing Council tree assets to be retained must be protected in accordance with the Australian Standard AS 4970–2009 *Protection of trees on development sites*;
- In accordance with AS 4970–2009, any works that would encroach by more than 10% into a tree's Tree Protection Zone (TPZ), or into its Structural Root Zone (SRZ), will require a consulting arborist to demonstrate, via a method consistent with this Australian Standard, that the affected tree would remain viable;
- An endorsed Planning Permit or Asset Protection Permit may require the preparation and submission of a Tree Protection Plan for Council approval. This plan must be developed by a qualified Arborist and consistent with the report requirements identified in AS4970–2009 Protection of trees on development sites. A bond, based on the tree(s), amenity value as calculated using the methodology in the Tree Valuation in Blayney Shire Council may be required and held for the duration of the works, which will be held against the Council approved Tree Protection Plan. Should any damage occur to any Council tree as a direct result of development works, Council may withhold part, or all, of the bond;
- Trees must not be pruned in any form and branches, or roots must not be cut or removed unless authorised by Council and/or an arborist. All pruning on trees must conform to AS 4373 *Pruning of Amenity Trees*;
- Trees identified and protected by relevant legislation for scientific, social, historical, heritage, horticultural or aesthetic reasons shall be recognised, protected, and retained in the landscape. This legislation includes the *Aboriginal Heritage Act 2006* (NSW), the *Heritage Act 2017* (NSW), and the *Planning and Environment Act 1987* (NSW)

Inspection Program

Council staff shall inspect all trees planted within road shoulders, nature strips and developed open space on tri-annual basis. Reference will be made to the Blayney Shire Council document, "Street and Open Space Tree Management Guidelines" (the guidelines), when undertaking the inspection of road shoulders, nature strips and developed open space trees.

No inspection regime has been developed for naturally self-sown trees located within road shoulders and public recreation areas.

Evaluation Procedure

Blayney Shire Council shall evaluate the findings of the Inspection Program by using the analysis tools set out in the Statewide Mutual, *Best Practice Manual – Trees and Tree Roots*. Adoption of this technique will be the responsibility of Council's Supervisor Parks and Recreation.

Control Regime Philosophy

Blayney Shire Council shall endeavour to follow the order for risk control as follows:

- Eliminate the risk
- Reduce the risk
- Accept the risk

This task shall be undertaken and managed by the Supervisor Parks and Recreation.

Implementation

Blayney Shire Council shall implement the policy in accordance with the guidelines.

Resourcing

Funding and physical resources shall be considered each year as part of Council's Operational Plan.

Identification of resources and incorporation into the Draft Operational Plan will be the responsibility of Council's Supervisor Parks and Recreation and Director Infrastructure Services.

Performance

Council's Operational Plan will incorporate annual performance targets based upon the inspection program. These targets will be reported as part of the six monthly Delivery Program progress report and annually as part of Council's Annual Report.

Tree Pruning under Powerlines

The Council (or contractor) shall undertake the pruning of all street trees affected by powerlines on a programmed basis. Programmed street tree pruning shall include trees on the side of the street affected by overhead powerlines as well as trees affected by electrical feeder lines to individual properties on the opposite side of the street. Programmed pruning shall not normally include trees on the opposite side of the street to powerlines. Programmed pruning is to be planned each year, on an as needs basis. Programmed street tree pruning shall address at least one of the following requirements to:

- Clear the canopy from interference with overhead powerlines and other essential services;
- Remove overhanging branches considered hazardous to traffic, buildings or structures;
- Under prune low growing branches considered hazardous to traffic or pedestrians;
- Form the shape of developing trees;
- Re-define the framework of mature trees;

- Rejuvenate vigour from undesired growth;
- Reduce crown density or to redistribute growth to lateral branches; or
- Remove dead, dying, diseased or pest infested limbs and branches.

Residents/Occupants may seek to have a street tree under powerlines pruned in advance or out of the programmed schedule and requests for the Council's approval must be submitted in writing to the Council for consideration.

Tree Pruning were Unaffected by Powerlines

The Council shall crown thin, under prune, property line prune (upon request) and remedial prune selected street trees unaffected by power lines, this pruning will be undertaken in the interests of:

- Public safety;
- Reducing structural risk to the tree; or
- Removing growth abnormality or disease, from the tree.

Requests from residents for the pruning of street trees not located under powerlines to reduce their height (therefore reducing leaf/fruit drop or improving light penetration), shall be made in writing to the Council.

Requests will be assessed in consideration of the following criteria:

- Species of tree;
- Location;
- Reasons highlighted by Resident;
- Health and condition of tree;
- Value of tree in overall streetscape; and
- Potential for significant nuisance or damage to property. Where residents/occupants contact the Council with a request to prune a tree unaffected by power lines, the following procedures is implemented:
- The tree is physically inspected by Council. An inspection report is completed, containing relevant statistical details;
- The resident/occupier will be advised of the Council's decision concerning their request; and
- In the event of a specific issue relating to pruning of significant trees, unaffected by power lines not being adequately covered by this policy/procedure, the matter is referred to Council for consideration and determination.

Tree Removal

Local Government Property Local Law 2016 prohibits the damage or removal of a street tree, or part of a tree without a licence. Any unauthorised person who removes/prunes/damages a street verge tree commits an offence for which an infringement notice may be issued. Street tree removals shall generally be on a "remove and replace" basis. Adjoining residents will be advised prior to removal, outlining reasons for such removal(s).

Circumstances where trees may normally be removed

The Council will normally undertake the removal of street trees under the following circumstances:

- The tree is diseased and beyond remedial treatment, or dead;
- The tree has been assessed by the Council as structurally weak and/or dangerous, placing the public at risk or jeopardising safety;
- The tree has been irreparably damaged (e.g. by a storm, vehicle accident);
- The tree is hazardous to motorists/pedestrians owing to interference in suitable sightlines presented by the tree's alignment or spacing;
- The tree is affected by road widening, service modification/relocation or other infrastructure works and all other options to retain the tree have been deemed by the Council to be inappropriate;
- The tree is dangerously in contact with overhead power lines or distributor wires to properties and where, for reasons of growth habit pertaining to the variety, selective pruning is not practical with the only option being severe lopping;
- The tree precludes reasonable development of an adjoining property and there is no reasonable alternative to removal; or
- The tree is not an approved specie/variety and is unacceptable to the Council.

Circumstances where street trees will NOT normally be removed

The following are not considered sufficient reasons for the removal of street trees:

- The tree obscures or potentially obscures views (other than traffic/pedestrian sight lines);
- The tree variety is disliked;
- The tree variety causes nuisance by way of leaf, fruit and/or bark shedding or the like;
- The tree causes allergies;
- The tree is in the way of a non-essential crossover or verge paving option;
- The tree shades private gardens; or
- The unsubstantiated 'potential' damage if the tree fails or from growth damage

Existing Street Trees adjacent to a development

Where a new or altered crossover or driveway is proposed such that it will require the removal of a street tree or be located within 1.0 metre of an existing street tree, the Council or nominee shall also assess the tree to determine whether a street verge tree is likely to be adversely affected as a result of the proposed development or whether the street tree can be removed.

If the street tree removal is not approved, the Council shall advise the applicant, in writing, that retention of the street tree is required and that the development access be redesigned. If removal of the street tree is approved, the officer shall advise the applicant that the street tree will be removed by the Council at the applicant's expense and a replacement tree to be planted by the Council, at the applicant's expense.

Crossovers shall be located a minimum of 1.0 metre from a street tree. Reduction to 0.5 metre may be considered, depending on availability of alternatives, tree species and location, sight lines and traffic safety.

Where approval is given to remove a street verge tree, the removal costs as determined by the Council.

Where approval for the removal of an existing street verge tree has been granted, a suitable replacement tree will be assessed, and planted by Council at the applicant's expense. In both instances such payment must be received prior to the works being carried out.

Should an existing street verge tree be damaged as a result of development works, the applicant/builder shall reimburse the Council for any arboriculture works required to ensure its survival. The extent/cost of this work shall be determined by the Council. Where an existing street verge tree is pruned/removed without authorisation, legal action may be taken at the discretion of the Council.

Tree Protection at Adjacent Development Sites

Council trees need to be protected at development sites in order to preserve the amenity of streetscapes and neighbourhoods.

Tree Protection Zone (TPZ) Requirements at Development Sites

For all demolition and construction works the developer/owner is responsible for the protection of all Council trees that are to be retained on Council managed land adjacent to the property by adhering to the following guidelines:

- A fence must be installed to create a TPZ at the cost of the applicant;
- The type of fencing must be in line with the Australian Standard for Protection of Trees on Development Sites;
- At minimum, the TPZ will cover two metres by two metres around the trunk – any lesser exceptions must first be approved by the Council; and
- The TPZ should not obstruct roads or footpaths unless approved alternatives are in place.

Community Engagement

Council's Community Engagement regarding management and maintenance of township street trees.

- The community will be informed and consulted about all major projects involving tree removal and planting and any other specialised projects that involve township street trees and park trees;
- The type and extent of consultation will vary depending on the impact of the works on the local community and will be determined in accordance with a number of factors including the prominence of the location, the significance of the tree(s), the size of the tree(s), the number of the trees and the visual impact of the proposed works;
- Community engagement may include direct contact with the customer, letters to immediately adjacent residents, signage on site and information on Council's website.

Legislative Context

Acts, Regulations, Standards and Environmental Planning Instruments relevant to this policy:

- *Environmental Planning and Assessment Act (1979)*
- *State Environmental Planning Policy (Vegetation in Non-Rural Area) 2017*
- *Waverley Development Control Plan (2012)*
- *Roads Act (1993)*
- *Work Health and Safety Act (2011)*
- *Electricity Supply Act (1995)*
- *Australian Standard AS4373 – Pruning of Amenity Trees*
- *Australian Standard AS 4970 – Protection of Trees on Development Sites*
- *Workcover Code of Practice – Tree Industry (1998)*

End of Policy

	Date	Minute
Adopted:	08/08/2011	1108/015
Last Reviewed:	08/08/2011	1108/015
	16/07/2018	1211/014
	19/04/2021	1807/008
	14/02/2023	2302/012
Next Review:	19/04/2025	



Verge Garden Guidelines

Procedure	25N
Officer Responsible	Director Infrastructure Services
Last Review Date	14/02/2023

POLICY OBJECTIVES

To enhance and maintain the visual amenity and safety of street verges throughout the Blayney Shire Council.

POLICY SCOPE

This policy sets out the process and conditions for all verges within the Blayney Shire Council.

The verge is the area of land between the kerb and the property boundary. The purpose of the verge is to provide an area where public utilities/services such as power, gas and telecommunications can be located.

The verge is also a public open space recognised and valued for its street trees and streetscape environment.

Verge gardens make productive use of land in town and the villages. It puts to practical use small patches of land that are otherwise neglected or planted to simplified plant communities, such as lawn verges, that are unproductive or that may consume excessive water and fossil fuels in their maintenance.

POLICY STATEMENT

Blayney Shire Council is committed to creating a visually appealing, safe, and sustainable environment.

Blayney Shire Council appreciates the contribution that residents make regarding the landscaping and maintenance of verges adjacent to their properties. Council is of the view that property owners should take responsibility for the landscaping, irrigation, and maintenance of street verges adjacent to their property, whilst the street trees will be maintained by the Council staff.

DO I NEED COUNCIL APPROVAL?

Yes.

These guidelines detailing opportunities for residents to establish and maintain a verge garden that will not impact on community safety, the environment and surrounding infrastructure.

APPROVAL PROCESS

There is a self-declaration form that you must complete to provide to Council as a record that your garden complies with these guidelines.

Council to investigate verge gardens, it is our preference to work with the resident to take action to remedy the issue and ensure the verge garden is modified to ensure public safety.

Where a verge garden continues to create conflict with public access and safety, Council may direct the property owner to alter any works in the road reserve, within 28 days. Council may alter the works if there is no action by the owner, at full cost to the owner. (*Roads Act (Section 98)*).

Residents can only plant a verge garden in the verge area immediately fronting their property. Verge gardens cannot be extended to your neighbour's property without written consent, or onto other public land, including traffic islands and median strips

Remember, it will be your responsibility to maintain your garden!

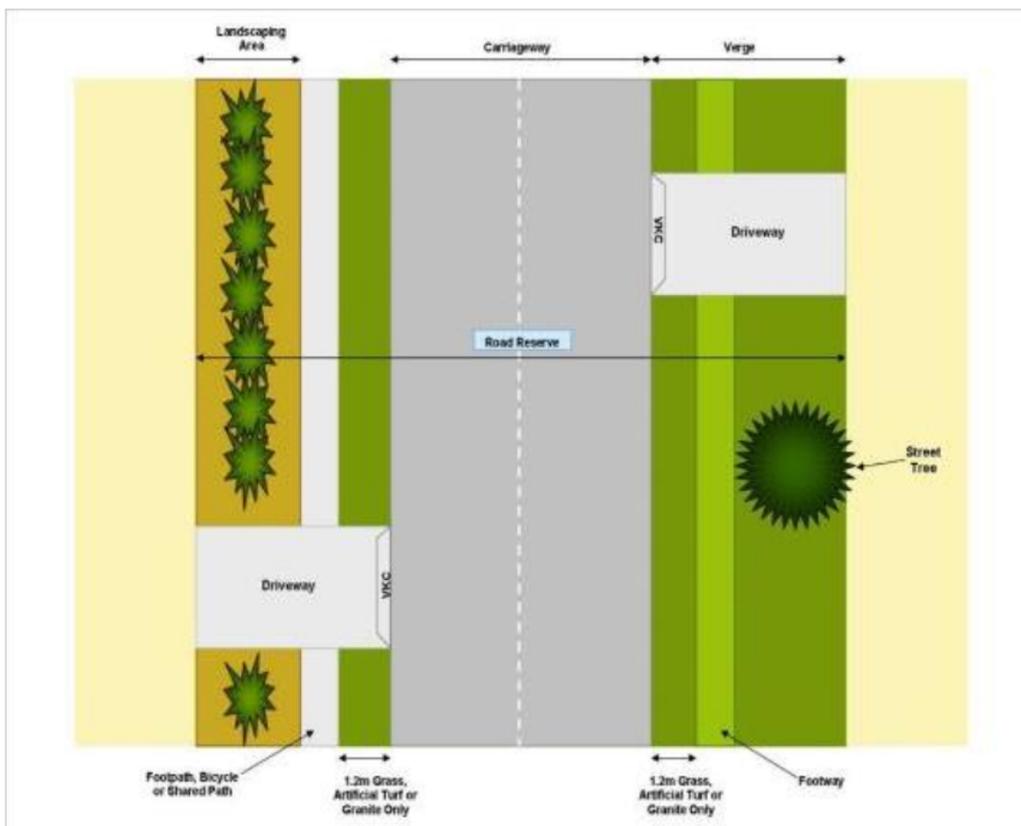
Guidelines for creating your Verge Garden

Here are some "simple rules" to help ensure success.

What is the verge?

The following sketch and definitions will give you some guidance on the verge and where you plant.

✓



Carriageway – the portion of road reserve formed for vehicular traffic.

Driveway – the unobstructed strip across the verge set aside for vehicular access between the carriageway and the adjacent property.

Footpath – a formed (1.5m min. width) path along the verge set aside for pedestrian traffic. Some older paths may be narrower than 1.5m in width.

Footway - the unobstructed strip (1.5m min. width) along the verge set aside for pedestrian access which has not been formed. Its width is dependent on whether a footpath, bicycle path or shared path is proposed for the street, and it generally begins 1.2m from the back of the kerb or edge of carriageway.

Hard landscaping – refers to retaining structures or edging/borders including bricks, stones, rocks or railway sleepers, but does not include concrete paving, asphalt or pavers.

Road reserve – the strip of public land between abutting property boundaries and includes the carriageway, footpaths, bicycle paths, shared paths, footways and verges.

Shared path – A formed (2.5m min. width) path along the verge set aside for pedestrian and bicycle access.

Street tree - a tree planted in the verge, of a species and location approved by Council. **Verge** – the area between the property boundary and the kerb (or edge of the roadway).

Have you spoken to your neighbours?

It is always a good idea to let your neighbour's know what you are planning.

✓

Having a simple conversation; allowing your neighbours to let you know of any concerns they may have, and adjusting your plans before you start work, helps support positive community engagement, and maintains a positive outlook for the greening of these spaces. It is important to remember that the verge is a public space, and if you plan on growing edible plants, passing pedestrians may seek to harvest from your garden, or neighbourhood animals may foul on your garden

Enjoy yourself – but be safe.

Residents are encouraged to create attractive landscapes that complement their homes, the surrounding streetscape, and support the local environment, but enjoy yourself while doing it.

✓

Whenever you are undertaking work, always consider your safety and that of others.

- Wear sturdy enclosed shoes, gloves and sun protection. "Slip, Slop, Slap".
- Never work on the road when planting your verge garden.
- Always maintain safe access for pedestrians and other users of Footways, or Council Footpaths, even during construction.

✓

Ensure you maintain safe access for pedestrians.

It is important that pedestrians can use the verge without verge gardens obstructing their path, and being forced onto the road. If the verge does not have a formal footpath, residents must leave a formed (1.5m min. width) path, free from trip hazards, along the verge for pedestrian traffic.

Can people open their car doors?

Verge gardens should provide a 600mm clearance from the edge of the kerb, so people can open their car door. Should you wish to plant this space choose a hardy groundcover that will tolerate some trampling.

✓

Remember the postie!

Leave enough space for Australia Post or other delivery service to access your letterbox
– usually, 1m around the letterbox is enough.

✓

What about services and utilities?

Underground service provision such as electricity, water, gas and telecommunications are generally assigned standard alignments, although historically this may not be the case. As these are located in the verge, service utility providers need to access them from time to time for maintenance and repairs.

✓

Always obtain a **Dial Before You Dig** report, by visiting www.1100.com.au or calling 1100 to obtain

your free dial before you dig report, and check with Council or other authorities who may not have services registered on the Dial Before you Dig service, before you start digging or excavation works.



Dial Before You Dig is a FREE national referral service designed to assist in preventing damage and disruption to Australia's vast infrastructure networks, which provide essential services we use every day.

Remember to leave 0.2m access around power poles and service pits that are located within the verge. If damage is caused to public utility service due to verge gardening activities, you must report this immediately to the relevant authority for repairs, the costs of which will likely be charged back to you.

Infrastructure upgrades within the verge.

It is the service authorities and/or Councils obligation to upgrade and maintain their infrastructure within the verge, and this may result in the excavation of all or part of your garden. There is no obligation from the service authorities or Council to reinstate a verge garden whilst undertaking upgrade or maintenance of their infrastructure.

Where a verge improvement (that is provided by the property owner) is damaged by a Service Authority, the property owner may negotiate with the service authority about rectification works.

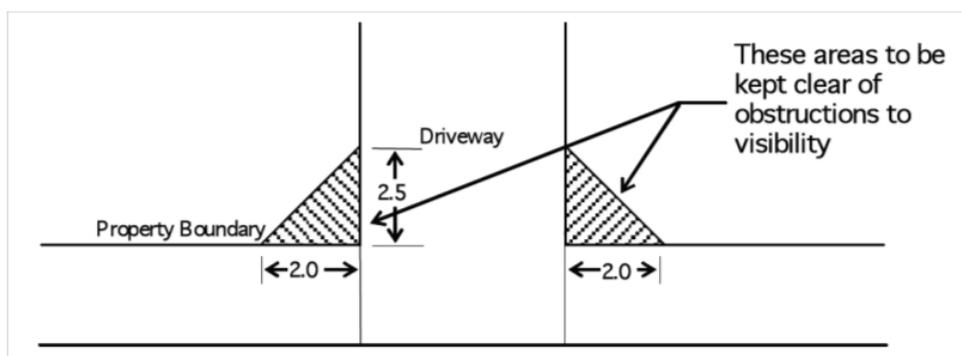
Where Council's activities impact the verge, Council will reinstate the verge to the same standard that existed prior to the commencement of work, excluding that area provided for pedestrian access, defined as the footway zone, that shall only be reseeded with grass. Reinstatement of any verge improvement will ensure it complies with these guidelines.

Remember pedestrian and traffic safety!

- ✓ Verge gardens must not impact on the driver's line of sight, including entering and exiting driveways, delineation of the road edge and / or pedestrian movements.

The streetscape is an important part of community open space, and the coordination of plantings is an important aspect of Council works. Council supports plantings (shrubs only) with flora that are drought tolerant and suited to hot, dry summers. Plantings should be maintained to a maximum height of 500mm. A preferred species list for verge gardens is provided at Appendix 2.

Plantings should ensure that no part of the treatment obstructs the required safe sight distance requirements at access driveways according to Figures 3.2 and 3.3 of AS/NZS 2890.1-2004 or Figures 3.3 and 3.4 of AS2890.2-2002 as applicable.



Properties situated at intersections shall ensure that no plantings obstruct safe sight distance at the intersection.

No structures or hard surfaces in your verge garden!

- x Remember the verge is public land. The area needs to remain free of obstructions and nuisances to others.

It is recommended that only plants and organic mulches are used. The construction of any structure, including retaining walls or fences, of any material or form, between the property boundary and edge of road is not permitted. Council may ask for its removal.

Any edging material, mowing strip, footpath, driveway cross over etc. shall be flush with the surface. Council intends working with owners of existing verge gardens to remove trip hazards, as these present an unacceptable risk to pedestrians.

The following forms of surface treatment are permitted within the 1.5m footpath corridor (whether existing or for a future footpath). This extends to 3m where a boundary fence or other clear delineation of property boundary has been constructed. Council may remove these, without recompense when constructing a footpath or shared path at some time in the future.

- Compacted rubble capped with crusher fines
- Brick, clay paving
- Asphalt or bituminous surfaces.

Outside of the footpath corridor;

- Un-irrigated grassed surface.
- Mulched surface
- Ground cover - Shrubs, low trees (up to 500mm)

The following surface treatments are not permitted on any side:

- Chemically sterilised treatments.
- Structures.
- Retaining walls.

- x **Don't plant trees in your verge – that's Council's role.**

Tree planting will only be undertaken by Council (or a group under the auspice of Council) and Council will be responsible for the location of new trees and their maintenance. The planting of trees and shrubs upon verges must comply with the Council "Street and Open Space Tree Policy".

If you would like a tree as part of your verge garden please contact us, and we will make arrangements

for someone from our Parks and Recreation team to meet with you, select a tree suited to your verge, and schedule it for planting.

What shall I plant?

Residents are encouraged to be creative and plant verges to suit their own taste. But remember plantings must not interfere with overhead or underground services including water and sewerage infrastructure, water meter servicing and reading, and sewer manholes.

Plants must also not be known or likely environmental weeds.

Growing edible plants along the nature strips of streets within our town and villages is an effective means of inspiring and enabling urban agriculture and contributes to:-

- Neighbourhood beautification
- Visual amenity
- Urban re-greening
- Increased biodiversity
- Environmental and sustainability education
- Improved garden soil profiles through carbon sequestration
- Reduced air temperatures in developed areas
- Developing social capital and community engagement.

✓ **Who can help me?**

Advice needs to be sought by contacting Councils Infrastructure Services Department, prior to the commencement of any works on the verge.

When you are planning your verge garden, call Councils Parks and Recreation team.

Local nurseries can assist with appropriate plant selection and recommend the use of local native plant species where possible.

Watering

Council supports the responsible use of water to maintain plantings using handheld trigger nozzle hoses. It is recommended that residents check the Central Tablelands Water (CTW) website www.ctw.nsw.gov.au for information related to current water restrictions that may apply.

Related Policies and Strategies:

- NSW Roads Act (1993)
- Local Government Act 2020.
- Statewide Mutual Best Practice Manual- footpaths Nature strips and Medians
- Blayney Shire Council - Street & Open Space Tree Management Procedure
- Blayney Shire Council - Pathway Hierarchy, Standard and Maintenance Policy (Draft)

STATEMENT

Council encourages the appropriate planting of verge gardens. Residents are encouraged to use local native plant species to ensure greater plant survival and to maximise benefits for local native fauna.

The Verge Gardening policy seeks to ensure the following environmental and social objectives are achieved:

- Recognition of the role of streets in increasing biodiversity and providing ecosystem services such as food and shelter for wildlife,
- Reducing carbon emissions and other costs associated with mowing
- Providing mental health benefits associated with gardening and spending time outdoors
- Providing a positive focal point for the community in the street scape
- Engaging the community in the design and maintenance of public spaces
- Improving skills and knowledge across Council and the community in creating more liveable spaces
- Ensuring that public land is managed in a manner that does not jeopardise public safety, access, infrastructure and essential services, and other community needs
- Creating a sense of place.

APPLICATION

Individual residents who want to establish or maintain a verge garden adjoining their residential property must submit an application and be given written approval by Council. Approvals for verge gardens are issued under section 138 of the Roads Act 1993.

Not every location is suitable for a verge garden due to safety, access, and public infrastructure (including street trees) requirements, and other community needs. In these instances, applications will not be approved.

Applicants must comply with all of the requirements of the Verge Gardening Guidelines. Each verge is unique Council retains the right to determine additional site-specific requirements.

Council undertakes street upgrade and street tree planting programs in consultation with residents. Although verge gardening projects are resident-driven, if Council is undertaking footpath works that offer the opportunity to create new unpaved areas that are suitable for verge gardens, residents can apply for a verge garden as per this policy.

GARDENS IN LANES

Council will consider applications from residents wanting to garden on public land adjoining their property in lanes (e.g., narrow kerbs along back and side fences in lanes). Gardening in lanes is not always permitted due to limited space and multiple conflicting uses.

Requests will be assessed taking into account:

- The volume and composition of traffic using the laneway
- Vehicle turning paths for access to off-street parking spaces
- Vehicle turning paths at laneway intersections
- Any slope in the laneway impacting the lean of high vehicles
- Safety issues associated with intersections and any other site-specific issues

ONGOING COUNCIL SUPPORT

Council can provide information to residents on garden layout, site preparation, plant species selection and weed management. Council will also provide a limited number of local native plants to new applicants.

INSURANCE

Council does not provide personal accident insurance for residents who injure themselves while gardening on the verge.

Council is not liable for any damage or loss that the resident may suffer by the act, default, omission or neglect of any other person or by reason of the Council, its members agents and contractors for failing to do something on or to the public space used.

ACCESS AND SAFETY

This policy aims to ensure verge gardens do not negatively impact on footpath and verge access and safety.

Council aims to ensure public places provide safe and equitable access for people of all abilities. A person with mobility difficulties may be unable to safely navigate the path if it is blocked or otherwise impacted by a poorly designed or maintained verge garden. Pedestrians crossing intersections may not be seen by motorists if there is tall dense vegetation on the verge. Similarly, verge gardens must not “trap” pedestrians in a road carriageway by forming a barrier in an unsafe location

INFRASTRUCTURE MAINTENANCE AND OTHER PUBLIC WORKS

Verge gardens that are well maintained ensure the ongoing health of Council’s Street trees. Street trees must not to be removed or damaged to create or maintain a verge garden. Early consultation with Council staff is encouraged if a verge garden is located in close proximity to a street tree to ensure the plant species selected are appropriate. Pipes and cables that provide essential services including gas, electricity, water, stormwater, sewerage, and communications are located underneath the footpath and verge. Utility companies, Council and their contractors need to carry out works on and underneath the footpath and verge from time to time to maintain these assets. This can include areas that have been approved for a verge garden.

Approval of a verge garden does not negate the right of access for utility companies, Council, and contractors to access and undertake works on this land and any assets beneath at any time. This could include complete removal of the verge garden for infrastructure projects (for example, footpath upgrades or underground cabling). Residents are not entitled to financial compensation for the loss of plants, or other items moved/removed to enable these works. Residents can opt out of maintaining the verge garden following works that impact part or all of the verge garden. In these circumstances Council will resume maintenance of the verge at the resident’s request, which may include the replanting of grass on the verge.

VANDALISM, THEFT AND OTHER DAMAGE

Verge gardens on public land may be susceptible to vandalism, theft, and other damage. Although Council is committed to supporting the verge gardening program, residents are responsible for any costs and works associated with restoring verge gardens following any such damage. Residents are not entitled to financial compensation for any such damage. Residents may choose to opt out of maintaining the verge garden following damage and need to notify Council of their decision. In these circumstances Council will resume maintenance of the verge, which may include the replanting of grass in the verge.

LEGACY VERGE GARDENS

Verge gardens established prior to publication of this policy that are found to be non-compliant with this policy are required to achieve compliance within 12 months of notice from Council. Potential issues are:

- All new plantings must be compliant
- No hard landscape materials, structures, or other items (see Guidelines for more information) to be used in the garden

- Non-compliant plants must be removed as soon as practical or when they die, whichever comes first within 12 months of notice from Council
- Non-compliant items must be removed as soon as practical or when they wear out, whichever comes first within 12 months of notice from Council; or where practical
- Where public safety and access is an issue, it must be immediately rectified

USE OF CONTRACTORS

Residents can engage contractors to undertake planting and maintenance of plants on a registered verge garden. The resident must ensure that contractors meet the requirements of this policy and have appropriate (public liability) insurances.

RESPONSIBILITIES

Council staff are responsible for the following:

- Reviewing and approving applications in accordance with the Policy;
- Providing initial and ongoing advice and support as requested, to resident verge gardeners;
- Monitoring verge gardens and responding to reports of breaches of the Policy and Guidelines.
- Reviewing and revising Policy and Guidelines.
- Reviewing and approving applications
- Reviewing and revising Policy and Guidelines

Residents are responsible for the following:

- Designing, establishing, and maintaining the verge garden in accordance with this Policy and Guidelines.
- Following Council direction in relation to any Compliance issues
- Advising Council if they are moving or are no longer willing or able to maintain the verge garden.

COMPLIANCE

If a resident does not comply with the Verge Gardening Policy or Guidelines, they will be issued with a letter outlining the non-compliant issues and be asked to address these within a given timeframe (usually 14 days).

Should the verge garden continue to remain non-compliant Council staff may take action necessary for the garden to comply including, but not limited to, trimming, and removing vegetation or other items that do not meet requirements or otherwise pose a risk to public access and safety.

Permission for the resident to garden on the verge may also be withdrawn, and in unresolved circumstances Council may resume maintenance of the verge, which may include restoration of grass in the verge.

In cases where there is a high risk to public safety Council may remove items without any notice. Council will not be liable for reimbursing residents for items removed.

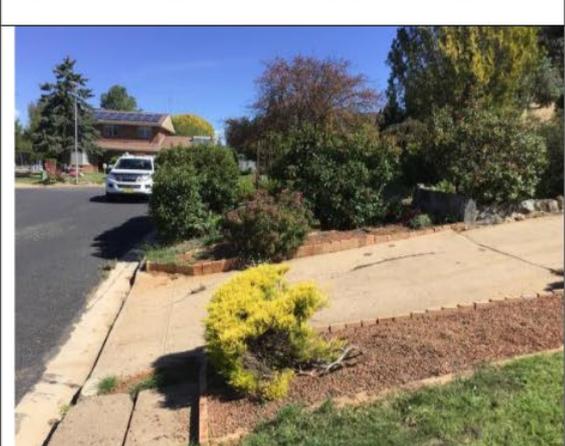
Where compliance is not achieved through the above means, more formal enforcement action may be taken under the Roads Act 1993 or Local Government Act 2020.

APPENDIX 1. Sample Verge Gardens

Good Outcomes

	<p>Landscaping area and street trees suitably located and footway clear. Suitability of trees under power lines should be considered.</p>
	<p>Clear footway. Driveway flush, no trip hazard.</p>
	<p>Clear footway. Driveway flush, no trip hazard. Landscaping should not be on roadside of footway. Modifications to the verge plantings may be required to accommodate any future footpath.</p>

Poor Outcomes

	<p>Hard landscaping (timber sleeper retaining wall) and landscaping impedes footway. Modifications to the retaining wall and gardens may be required to accommodate any future footpath.</p>
	<p>Poorly maintained and impedes footway. Significant trip hazards for pedestrians.</p>
	<p>Poorly located trees, over CTW underground water infrastructure. Well maintained landscaping against boundary fence. Removal of part of the trees will be required to accommodate any future footpath.</p>
	<p>Trip hazard at driveway and landscaping impedes footway and needs to be removed. Well maintained landscaping. Removal of part of the gardens and trip hazard will be required to accommodate any future footpath.</p>

APPENDIX 2. Preferred Species List for Verge Gardens

Type	Name		Mature Height
	Botanical	Common	
Grasses (Dry)			
	dianella revoluta	Blue Flax Lily	1m
	lomandra longifolia	Lomandra	1m
Herbaceous / Shrub			
	Dietes vegeta	Dietes	90cm
	Ophiopogon japonicas	Mondo Grass	40cm
	Gazania	African Daisies	30cm
	Erigeron karvinskianus	Seaside daisy	25cm
	Agapanthus	Dwarf Agapanthus	80cm
	Abelia grandiflora	Dwarf Abelia	1m
Bulbs	Narcissus sp	Daffodil	45cm
	Tulipa sp	Tulip	45cm
	Narcissus sp	Jonquil	45cm
	<u>Cerastium tomentosum</u>	<u>Snow in summer</u>	30cm
	Salvia	Sage smaller sp	To 1m
Succulent	Carpobrotus glaucescens	Pig face	25cm
Annuals			
	Petunias		20cm
	Violets		20cm
	Pansies		20cm

Plants should be maintained to a maximum height of 500mm.

The plants listed are tough and perform well in the local environment.

The list is a guide only, and not comprehensive.

Local nurseries can assist with appropriate plant selection, including different species that may also be suitable, and recommend the use of local native plant species where possible.

Council Details	
Address:	Website: www.blayney.nsw.gov.au
Blayney Shire Council	Email: council@blayney.nsw.gov.au
91 Adelaide Street, BLAYNEY	Phone: (02) 6368 2104
NSW 2799	
PO Box 62 BLAYNEY NSW 2799	ABN: 47 619 651 511



Verge Garden Guideline
Self-Assessment and Declaration

Blayney Shire Council residents are to use this checklist when preparing and planting your verge garden.

There is a declaration you can complete and send to Council, which we will keep as a record of your verge garden complying with these guidelines, should Council be asked to investigate at a later point in time.

Please email this declaration to council@blayney.nsw.gov.au

For further information, please contact Council on (02) 6368 2104.

DECLARANT DETAILS (optional)
NAME:
ADDRESS:

CHECKLIST	Ye s	N o
I have talked to my neighbours and considered their feedback on my verge garden proposal.	<input type="checkbox"/>	<input type="checkbox"/>
I have planned my verge garden project to ensure safe pedestrian access while I construct my verge garden.	<input type="checkbox"/>	<input type="checkbox"/>
My verge garden is in line with my property boundary and does not encroach upon my neighbour's verge.	<input type="checkbox"/>	<input type="checkbox"/>
I have ensured my verge garden will retain a pedestrian access 1500mm wide, which is level and free from trip hazards.	<input type="checkbox"/>	<input type="checkbox"/>
My verge garden has been designed to ensure car doors can open with no plants, or with only low groundcovers within 600mm of the edge of kerb.	<input type="checkbox"/>	<input type="checkbox"/>
I have left clear access for the mailman.	<input type="checkbox"/>	<input type="checkbox"/>
I have left clear access around service pits and power poles.	<input type="checkbox"/>	<input type="checkbox"/>
I have a safe and accessible place for the collection of waste/recycling bins.	<input type="checkbox"/>	<input type="checkbox"/>
I contacted Dial before you Dig on 1100 or www.1100.com.au and obtained a free services report to confirm that there are no underground utility services that will be impacted by garden.	<input type="checkbox"/>	<input type="checkbox"/>
I contacted Council to obtain information on any Council or service authority utilities that may be in my verge.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that my verge garden could be impacted by future infrastructure works, and Council or service authorities may not replace any plants lost.	<input type="checkbox"/>	<input type="checkbox"/>
My garden will be maintained to a maximum height of 500mm to ensure line of sight for traffic and pedestrians.	<input type="checkbox"/>	<input type="checkbox"/>
If I want to install a tree, I will contact Council to request a site visit, and assess the specific site constraints.	<input type="checkbox"/>	<input type="checkbox"/>

SIGNATURE:	Date
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End of Policy

Adopted:	17/05/2021	2105/009
Last Reviewed:	17/05/2021	
	14/02/2023	2302/012
Next Review:	19/04/2025	