



Our ref: 5298917

28 August 2014

The Director, Justice Policy  
Department of Justice  
GPO Box 6  
SYDNEY NSW 2001

Email : [justice.policy@agd.nsw.gov.au](mailto:justice.policy@agd.nsw.gov.au)

Dear Sir/Madam,

## **Review of the Government Information (Public Access) Act 2009 [the GIPA Act]**

I have been appointed the Right to Information Officer by Council's General Manager and I am responding to your invitation to make this submission on behalf of Council.

### **1. Application fees, processing charges and chargeable activities for Access Applications**

Council acknowledges the provisions of ss64-71 of the GIPA Act, [GIPA Act fees and charges](#) fact sheet and [Guideline 2 : Discounting Charges](#) that details instructions on the access application fee and processing charges.

Council is aware that the object of the GIPA Act is *to facilitate and encourage, promptly at the lowest reasonable cost, access to government information ....restricted only when there is an overriding public interest against disclosure.*

The application fees and processing applying for access applications have remained unchanged, not even indexed, since its introduction under the repealed Freedom of Information Act 1989.

Due to GIPA Act provisions and guidelines issued by the Information Commissioner in the area of chargeable fees and processing charges for access applications, Council is unable to charge on a range of associated activities. The following list is some examples of this:

- seeking clarification from the applicant on their requirements;
- preparing notices of a valid access application, request for advance deposits of processing charges, amendment to requirements in line with s60 of the GIPA Act, acknowledgement of withdrawals (when not received in writing from the applicant);
- consideration of submissions made by the applicant for a discount on processing charges on grounds of special public interest.

Council's resources are burdened where it is unable to operate a user pay system and is often forced to reduce service levels in whatever areas are possible. This is ultimately borne by the local community, rate payers, constituents and visitors.

Council's requests that the Information Commissioner review:

- 1 the application fees and processing charges for access applications so that they are indexed to the current Consumer Price Index;
2. the types of activities that can attract a processing charge for access applications to reflect a user pay system.

## 2 Managing public requests for information on Development Applications

On 4 January 2013 Council began displaying development application (DA) documents on Council's website using the [application tracking](#) feature for DA's submitted on and after 1 January 2013. The IPC [Guideline 2 : Development Applications](#) has been applied in managing personal information held on DA's on Council's website.

The DA documents, which are currently being displayed, include the following:

- [Application form](#) (only pages 1 – 3 which omits personal information, contact details and signatures);
- Statement of Environmental Effects, including any accompanying reports;
- Plans (which omits internal configurations to residential buildings);
- Additional information submitted by the applicant, which may include things such as revised plans (which omits internal configurations to residential buildings) and revised Statement of Environmental Effects etc.

In respect to public requests that seek DA information not contained on Council's website or for customers without internet access, Council provides copies of DA's within the requirements of:

- Sections 6 and 18 of the GIPA Act and Schedule 1 of the *Government Information (Public Access) Regulation 2009 (NSW)* (the GIPA Regulation);
- Section 158A of the *Environment Planning and Assessment Act 1979 (NSW)* (the EPA Act);
- Sections 264-268 *Environment Planning and Assessment Regulation 2000 (NSW)* (the EPA Regulation);
- Personal information contained on DA's is managed in line with the *Privacy and Personal Information Protection Act 1998 (NSW)* (the PPIP Act).

Council implemented its Privacy Management Plan by 1 July 2000 and undertook a review of its application forms during 2001 that ensured compliance with the PPIP Act. This review ensured that all application forms included a privacy statement and the current version follows:

### ***Privacy and personal information protection notice***

- *this information is voluntarily required to process your request and will not be used for any other purpose without seeking your consent, or as required by law;*
- *your information may comprise part of a public register related to this purpose;*
- *your application will be retained in Council's Records Management System and disposed of in accordance with the Local Government Disposal Authority;*
- *your personal information can be accessed and corrected at any time by contacting this Council.*

Customer requests made in person or in writing to Council are provided copies of DA information whenever created including those pages containing personal information, contact details and signatures of the applicant for a DA and the subject property owner.

Plans to a residential building are limited to height and site configurations in line with Clause 3 (2) (a) of Schedule 1 of the GIPA Regulation unless plans are required by the current property owner of the subject property or where they provide their written authority to release this information to a third party.

All plans are stamped with the following Copyright Notice:

*Council provides this information under the requirements of the Government Information (Public Access) Regulation 2009 and the Environmental Planning and Assessment Act 1979. This information is for your review only and is subject to copyright. Council accepts no responsibility for the recipient's use of this information.*

Copies of DA public submissions are also provided to the public upon request subject to screening the submission content for any overriding public interests against disclosure and ensuring that the submission writers were invited to make submissions with the following privacy disclaimer:

*Council is committed to openness and transparency in its decision making processes. The Government Information (Public Access) Act 2009 requires Council to provide public access to information held unless there are overriding public interest considerations against disclosure. Any submissions received will be made publicly available unless the writer can demonstrate that the release of part or all of the information would not be in the public interest. However, Council would be obliged to release information as required by court order or other specific law.*

Public requests received for DA information also include DA's that precedes the EPA Act 1979. Council applies the provisions of Clause 4 a), b) or c) of the GIPA Regulation in relation to these historical DA's. However, the provision of personal information contained in these DA's is of particular concern to Council as those applications lodged prior to 2001 do not contain any privacy notice to applicants or property owners of the subject property.

Council requests guidance from the Information Commissioner on managing personal information contained in DA information that is not held on Council's website.

3. Managing public requests for Building Applications and Development Applications lodged prior to the amendment of the EPA Act 1979 on 1 July 1998

Prior to changes to the EPA Act effective from 1 July 1998, residential building did not require development consent. Building Applications (BA's) for residential dwellings were processed under the Local Government Act (NSW) 1919 and 1993 (LGA). Applications for subdivision were also undertaken under the LGA until the EPA Act was amended in 1998.

Council continues to receive public requests for building plans that are held since 1954 and development applications since the 1980's

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Council applies the provisions of Clause 4 a), b) or c) of the GIPA Regulation in relation to these historical BA's and DA's. However, the provision of personal information contained in these applications is of particular concern to Council as those applications lodged prior to 2001 do not contain any privacy notice to applicants or property owners of the subject property.

Again, Council seeks guidance from the Information Commissioner on managing personal information contained in BA and DA information prior to the amendment of the EPA Act 1979 on 1 July 1998.

For further information please contact me on 6648 4211.

Yours faithfully

Sylvia Henderson  
Information and Privacy Officer