

Policies to be adopted

- Compliance Policy
- Copper Chrome Arsenate (CCA) Management Policy
- Pesticides/Herbicides Policy
- Water Saving Incentives Policy
- Gathering Information for Risk Management Policy

Policy title	Compliance
Responsible manager(s)	Divisional Manager, Environmental Services
Contact officer(s)	
Directorate	Planning and Sustainability
Approval date	TBA
Focus area	2. Our community is a great place to live
Delivery Program link	L4.1 Conduct regulatory compliance and enforcement activities
Operational Plan link	L4.1.2 Monitor, inspect, enforce and investigate complaints in relation to public and environmental health

Purpose

This policy provides information about council's position on compliance and enforcement matters in the Eurobodalla Shire.

The purpose of this policy is to provide a structure for consistency and transparency in decision making, and to facilitate a balanced approach to compliance and enforcement. It is also intended to assist council staff to act promptly, effectively and consistently in response to allegations of unlawful activity.

This policy outlines matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option council will choose and whether to commence criminal or civil proceedings.

Policy aims

- Enable council to acknowledge its obligation under Section 8 of the Local Government Act 1993 to ensure that its regulatory powers are carried out in a consistent manner and without bias.
- Establish clear guidelines for council's authorised officers in dealing with proactive regulatory action, and for assessing and investigating customer service requests or complaints about unlawful activity.
- Provide a proactive position regarding enforcement action in regard to council's regulatory and compliance functions.
- Foster responsive and responsible regulation, fairness, consistency and equity in any action taken by council in response to allegations of unlawful activity.
- Establish operational priorities and the factors to be considered when determining how a complaint should be dealt with by the council.
- Make the council's policies and requirements for compliance readily accessible and understandable to the public.

Policy details

1	<p>Application</p> <p>This policy applies to all lands contained within the Eurobodalla Shire.</p>
2	<p>Legislation</p> <p>This policy ensures Eurobodalla Shire Council's compliance with Section 8 of the <i>Local Government Act 1993</i> and relevant legislation and regulations that Council operates under.</p>
3	<p>Compliance Process</p> <p>The Compliance Process (see Appendix 1 to 3) establishes the factors that will be considered when determining how a compliance matter will be handled. This process includes the following:</p>
3.1	<p>Assessment Framework</p> <p>Council will record and assess every report alleging unlawful activity.</p> <p>Generally, council's objectives when dealing with reports alleging unlawful activity are to:</p> <ul style="list-style-type: none"> • maintain the collective good and welfare of the community • prevent or minimise harm to health, welfare, safety, property or the environment • consider the broader public interest having regard to council's priorities and any resource limitations • consider the report fairly and impartially. <p>Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment.</p> <p>Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly stated.</p> <p>An investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If council decides to investigate, staff will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation.</p> <p>Decisions about what action should be taken by council are made at the council's discretion. The objective is that reports alleging unlawful activity will be resolved to the satisfaction of council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal compliance and/or enforcement action, depending on the nature of the breach.</p> <p>Council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of</p>

	<p>unlawful activity, council may be unable to take further action. They will also explain that council has limited resources and powers to deal with reports alleging unlawful activity. If council is unable to fully investigate or take action on a matter because it is restricted by legal or resource limitations this will be explained to the individual.</p> <p>When there are specific statutory requirements that must be met in relation to notices and orders council staff will provide all explanatory communications in plain English and explain any technical language the law requires to be used.</p>
3.2	<p>Investigation Process</p> <p>The objective of the processes council staff use when investigating incidents of alleged unlawful activity is to:</p> <ul style="list-style-type: none"> • determine the cause • determine if there has been a contravention of law, policy or standards • determine if Council is the appropriate regulatory authority (ARA) and if not, the matter will be referred to the ARA for action • gather evidence to the required standard to support any required enforcement action • determine any necessary action to mitigate the possibility of reoccurrence of similar incidents. <p>Investigation action may include but is not limited to any of the following:</p> <ol style="list-style-type: none"> a) A desktop review b) Assessment of likely environmental and public harm and safety c) A site inspection d) Interviews with any relevant persons
3.3	<p>Compliance and enforcement options</p> <p>Once an investigation has been completed, council officers will decide whether to take further action on the basis of evidence. Each matter will be considered on a case by case basis, taking into account factors detailed within the compliance framework and enforcement options (see Appendix 2).</p>
4	<p>Councillors involvement</p> <p>As per the provisions of the <i>Local Government Act 1993</i> and the Council's <i>Code of Conduct</i> (which is in accordance with the <i>Model Code of Conduct for Local Councils in NSW</i> under s440 of the <i>Local Government Act 1993</i>), councillors should not be involved during investigations on compliance matters.</p> <p>Investigations of alleged unlawful activities are operational tasks to be undertaken by council staff. Councillors may not direct or influence a council officer in undertaking their statutory duties associated with compliance and enforcement. Any involvement of councillors in compliance or enforcement matters will be reported to the General Manager by the relevant director.</p> <p>Councillors should not act as witnesses for individuals during investigations so as to avoid or minimise allegations that the councillor:</p>

	<ul style="list-style-type: none"> a) has a conflict between personal or private interests and the councillor's public duty; and / or b) the councillor is biased (or there is an apprehension of bias) because the councillor has formed an opinion about the matter prior to receiving all of the relevant information; and / or c) the councillor has been inappropriately influenced by representations made by the individual and could not make an impartial decision about the matter. <p>This is particularly important if, at a later stage, the matter is formally put to council for a decision about whether compliance and enforcement action should be taken. Councillors are entitled to speak to their constituents and visit sites at any other time and they may make enquiries about the progress or status of compliance matters through the General Manager or staff approved by the General Manager. The General Manager and staff will make all efforts to respond within a timely manner to enquiries made by councillors about compliance matters. The General Manager and staff will also arrange confidential briefings to councillors where it is considered by the General Manager to be appropriate.</p> <p>Councillors may, through the accepted processes:</p> <ul style="list-style-type: none"> • ask questions of the General Manager through formal written submission; • ask questions to be answered in council meetings about compliance matters and • put motions before the council for resolution. <p>Councillors are entitled to attend any public legal proceedings in the Court, but are not entitled to direct council's legal advisers or lawyers unless expressly permitted to do so by the General Manager.</p>
5	<p>Confidentiality</p> <p>Council will respect the privacy and confidentiality of information received in accordance with its Privacy and Information Protection policy. However due to statutory obligations and other requirements, confidentiality cannot always be guaranteed. Council may have to disclose information that identifies them in the following cases:</p> <ul style="list-style-type: none"> • the disclosure is necessary to investigate the matter • their identity has already been disclosed to the subject of their report directly or in a publicly available document • the individual was consulted following receipt of a <i>Government Information (Public Access) Act 2009</i> application and did not object to the disclosure • the individual consents in writing to their identity being disclosed • the disclosure is required to comply with principles of procedural fairness • the matter proceeds to court. If matters proceed to prosecution or legal proceedings, complainants may be contacted and requested to provide witness statements or affidavits. <p>Council will take seriously any concerns an individual may have about their physical safety being endangered as a result of making a report. However, this may limit council's ability to investigate the matter.</p>

6	Vexatious or anonymous complaints <ol style="list-style-type: none"> Vexatious complaints will not be investigated by Council. Vexatious complaints are complaints which are clearly made with the sole intent of annoying a person or complaints which are without substance made frequently by the same individual or entity. Anonymous complaints will not generally be investigated by Council. The nature of the alleged breach may require some level of investigation but, in the main, anonymous complaints will not be investigated.
7	Advance publicity and media statements (Prosecutions) <p>No public statements are to be made by the Mayor, councillors or the council staff in connection with any case involving council where legal proceedings are before the court or are under investigation and may go before the court.</p>
8	Fees and fines <p>Council may issue orders or notices which incur administration costs. Additional inspection fees will also apply where Council is to commit staff resources to enforce compliance by way of notices, orders and/or follow up inspections. Fees are listed in council's adopted Fees and Charges and will be applied where appropriate. Some fees are identified in the legislation being enforced and are charged accordingly. Failure to pay fees and fines is an offence and may result in further costs or legal actions.</p>

Implementation

Requirements		Responsibility
1	Compliance Process <p>This policy is implemented via council's Compliance Process (Appendix 2) which specifies the actions, procedures and matters to be considered.</p>	Council Officers
2	Management of Process <p>Procedural complaints are to be reviewed by the relevant Divisional Manager who bears the responsibility for all outcome decisions (with the exception of criminal prosecutions). If the Divisional Manager supports a prosecution or legal proceedings then the matter is referred to the General Manager through the relevant director for a decision on whether to proceed.</p>	Divisional Manager
3	Staff <p>Under supervision, relevant Council staff will be responsible for ensuring that this policy is implemented appropriately within their work area, after they have received appropriate training to do so.</p>	Council officers
4	Concerns <p>Public concerns communicated to Council in relation to this policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints policy. These records will be</p>	Council officers

	used to determine any follow-up actions and analyse the history of reported public concerns.	
5	Complaints Complaints received regarding this policy will be lodged with the Public Officer and handled in accordance with council's Complaints Policy.	Public Officer
6	Consultation Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, statutory and industry bodies. Public submissions regarding this policy are invited for consideration during the exhibition period.	As applicable

Review

The policy will be automatically revoked at the expiration of twelve months after the declaration of the poll for the next general NSW local government election, unless Council revokes it sooner.

Note: Automatic revocation of the policy is provided for by section 165(4) of the Local Government Act 1993. The next general local government election is expected to be held in September 2020.

This policy may also be reviewed and updated as necessary when legislation requires it; or Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages compliance matters.

Reviews of the effectiveness of this policy could include the following:

Performance indicator	Data source(s)
Delivery Program/ Operational Plan outcomes achieved	Council reporting
Concerns or complaints registered	Council records
Customer feedback, survey responses	Surveys
Internal or external review	Audit

Definitions

Word/ Acronym/ Phrase	Definition
ARA	Appropriate Regulatory Authority
Complaint	<p>A complaint is an expression of dissatisfaction made about council services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>For the purposes of this policy, a complaint does not include:</p> <ul style="list-style-type: none"> • a report alleging unlawful activity (see definition below) • a request for information about a council policy or procedure • a request for an explanation of actions taken by council • a request for internal review of a council decision.
Enforcement	Actions taken in response to contraventions of laws.
Regulation	Using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by council.
Report alleging unlawful activity	An expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.
Unlawful activity	<p>Any activity or work that has been or is being carried out contrary to the below and/or failure to take required action in order to be compliant with:</p> <ul style="list-style-type: none"> • terms or conditions of a development consent, approval, permit or licence • an environmental planning instrument that regulates the activities or work that can be carried out on particular land • a legislative provision regulating a particular activity or work • a required development consent, approval, permission or licence.

Governance

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies, and guidelines.

Related legislation and policies

Name	Link
Privacy and Information Protection Policy	www.esc.nsw.gov.au/inside-council/council/council-policies
Local Orders Policy	www.esc.nsw.gov.au/inside-council/council/council-policies
Complaints Policy	www.esc.nsw.gov.au/inside-council/council/council-policies
Council Fees and Charges	www.esc.nsw.gov.au
Local Government Act 1993	www.legislation.nsw.gov.au/maintop/view/inforce/act+30+1993+cd+0+N

Related external references

Name	Link
Office of Local Government	www.olg.nsw.gov.au
NSW Ombudsman	www.ombo.nsw.gov.au

Supporting documents

Name	Link
NSW Ombudsman Model Compliance and Enforcement Policy	http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0004/29920/Model-Compliance-and-Enforcement-Model-Policy.pdf
NSW Ombudsman Enforcement Guidelines for Councils	http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0003/29856/Enforcement-Guidelines-for-councils.pdf

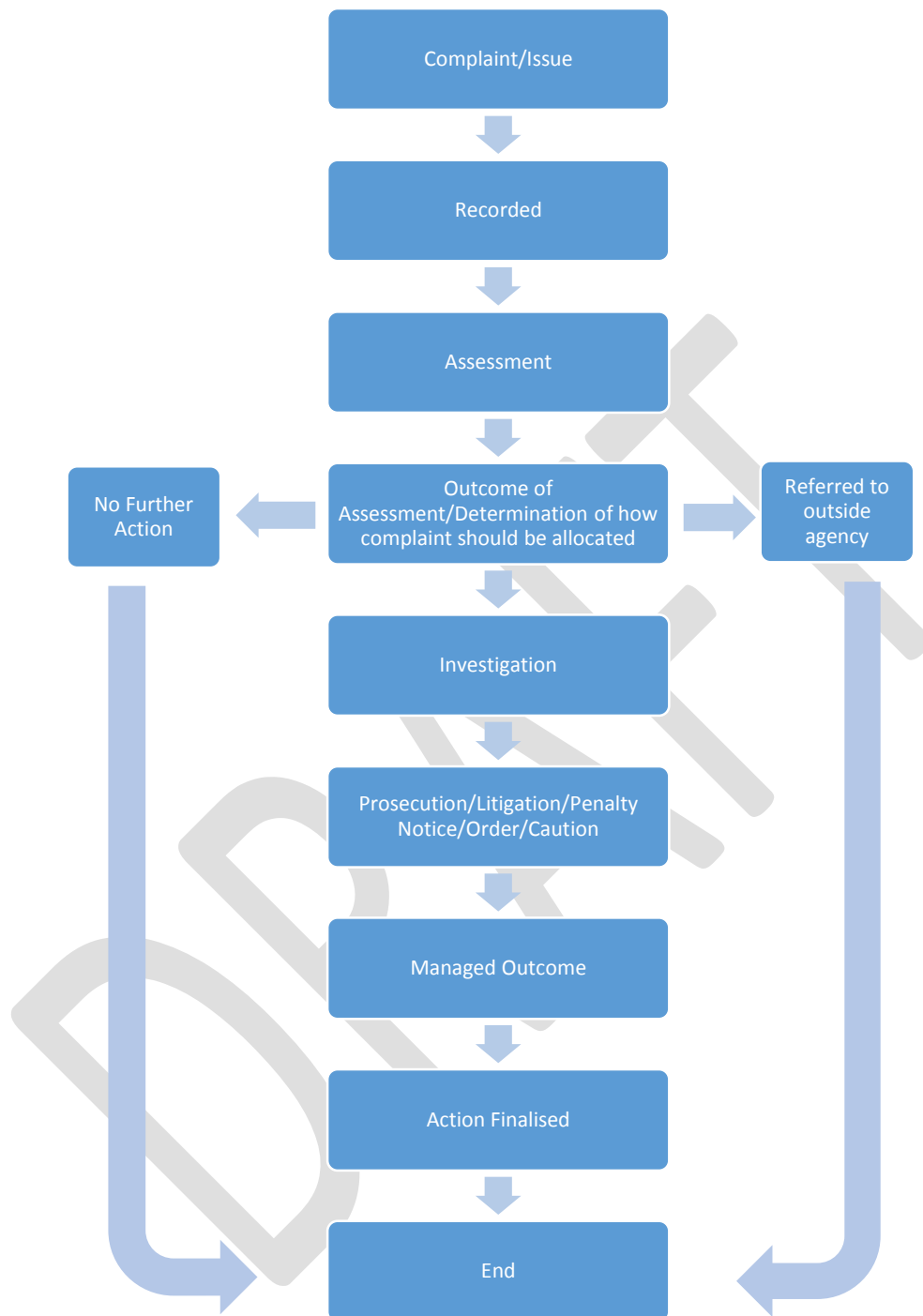
Change history

Version	Approval date	Approved by	Min No	File No	Change
1	19 Dec 2006	Council	06/4687	06.0381 06.0445	Policy adopted
2	22 Sep 2009	Council	09/291	E06.0381 E09.3419	Policy reviewed and adopted – Report G09/99
3	28 July 2011	Council	11/163	E06.0381 E09.3419	Policy reviewed and updated, name changed – report O11/124
4	23 July 2013	Council	13/172	E13.7095	Updated Policy Template, updated review date, updated references and links – report O13/112
5	dd mmm 2016	Council	TBA	E16.0297 See list	Reviewed and updated (start of new Council term)

Internal use

Responsible officer		Director, Planning and Sustainability Services		Approved by	Council
Minute #	TBA	Report #	TBA	Effective date	TBA
File	See list E16.0297	Review date	Sep 2020	Pages	15

Appendix 1. Compliance Flow Chart



★ Although no further enforcement or compliance action may be taken, the complaint may be referred to another council section for consideration or retained to provide evidence/intelligence for proactive enforcement at a later date

Appendix 2. Compliance Process

The Compliance Process establishes the factors that will be considered when determining how a compliance matter will be handled. This includes the following:

1. Assessment Framework
2. Investigation Process
3. Compliance and Enforcement Options

1. Assessment Framework

The Assessment Framework establishes the factors that will be considered when determining how complaints will be initially considered by Council and whether or not a complaint will lead to further detailed investigation by Council.

1.1. Details of Assessment

All matters will be assessed in accordance with the priorities outlined below:

Factors	Description
Incident type	Broad description of the complaint
Legislative responsibility	Is the matter within the jurisdiction and responsibility of the council?
Impact on community	A rating of the perception of community interest in the matter
Impact on Council	How does the matter affect the operations of Council?
Impact on complainant	How does the matter affect council's customer?
Possible outcome	What will a more detailed investigation be likely to achieve? What are the possible outcomes of a detailed investigation? What are the potentials for remedy?
Response required	Broad description of the urgency of the matter
Resources available	Does council have the available skills and equipment to properly investigate the complaint?
Value	What is the potential, likely or actual environmental, social and economic impact of the incident/activity complained of?
Appropriate defendant	Who is the most appropriate defendant? (It could be the landowner, contractor, occupier or multiple defendants).
WHS risk	Risk to council staff and/or public safety

1.2. Rating of community/complainant impacts:

High	Immediate threat to persons, environment, property, business, council assets etc.
Medium	Significant risk of adversely impacting persons, the environment, property, business, council assets etc.
Low	Some risk of adversely impacting persons, the environment, property, business, council assets etc
Special	Other considerations specific to the circumstances

1.3. Rating of council impacts:

Critical	Immediate risk to council assets, structure, staff etc
Significant	Legislative responsibility of council, significant resource implications
Routine	Requires attention in the normal process of business
Special	Other considerations specific to the circumstances

1.4. Types of responses and target times:

Priority	Classification	Initial Response Time
1	Very high	24 hours
2	High	48 hours
3	Medium	7 days
4	Low	21 days if resources are available

Response times are linked with Council's Customer Service Request targets.

1.5. Outcome of assessment

Outcome	Reasons
No further action	Not in council's jurisdiction, not a matter requiring attention, low impact, no resources available to attend
Referred to other agency	Not in council's jurisdiction and in the province of another agency
Referred to other council section	Does not require compliance or enforcement action or falls under the jurisdiction of another section within council
Received for information	Complaint minor in nature and will not be actively investigated. May afford intelligence for proactive enforcement at a later date
Investigation action	Satisfies all factors and will be investigated. See Step 2 – Investigation Process

2. Investigation Process

Investigation action may include but is not limited to any of the following:

- a) A desktop review
- b) Assessment of likely environmental and public harm and safety
- c) A site inspection including interviews with any relevant persons

All investigative procedures are for the purposes of gathering information and evidence to determine if a breach has occurred and who may be responsible for the breach. Evidence may include: digital surveillance, videos, photographs, samples and physical evidence, witness statements, file notes and records of any interviews. The procedure and type of investigation undertaken by Council will depend on the facts and circumstances of each case.

Investigating officers are to undertake their investigation in a professional manner that is:

- a) Objective, fair and impartial
- b) Consistent with the presumption of innocence
- c) Within their delegated authority
- d) In accordance with the law

If an investigating officer forms the belief that there is sufficient evidence to establish an individual has committed an offence, when questioning that individual, the investigating officer must caution the individual that he or she does not have to say or do anything but that anything the individual does say or do may be used in evidence.

3. Compliance and Enforcement Options

Once investigation has been completed, council officers must decide whether to take enforcement and prosecution action on the basis of evidence or unauthorised activity. The significance of the breach is taken into consideration. The same factors for consideration set out in the Assessment Framework will be reviewed when determining the compliance and enforcement action which will be taken. Each matter will be considered on a case by case basis, taking into account the factors set out at 3.1 below. Outcomes include:

No Action	The decision is taken not to proceed, even though the possible offence has been established
Managed Outcome	An agreed settlement, in writing, usually involving some reinstatement or restitution that does not preclude further action should there be any failure to comply or subsequent offences
Caution Verbal	Verbal advice to an individual advising them of the offence and cautioning them that action will be taken on further breaches
Caution Written	Letters and/or preformatted notes addressed to an individual or business advising them of the offence and cautioning them that action will be taken on further breaches
Orders	Written or verbal directions, notice or orders enforceable by law requiring some action by the identified party

Penalty Infringement Notice ('PIN')	The issue of a fine prescribed by relevant regulation for the identified offence
Prosecution or civil enforcement proceedings before a court	The submission of a brief of evidence via supervisor to council's solicitor or the nominated prosecutor so they may undertake a prosecution or civil enforcement proceedings on council's behalf.

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3.1. Factors to be considered when choosing an option

Available remedies of law	What remedies are available under the relevant legislation? e.g. orders, fines, prosecution etc
Seriousness of the breach	What type of offence has been committed? How seriously would this breach/unlawful activity impact the community, in terms of time/cost/inconvenience? Is the matter trivial or technical in nature?
Precedent	What actions has council previously taken in similar circumstances?
History of Council dealings with person	Has this person come to the notice of council for other, the same or similar offences? What were the outcomes/results of such dealings?
Contrition	Does the person or corporation exhibit remorse for the offence? In some cases it will be appropriate to have regard to the offender's apparent willingness to prevent a recurrence of the offence.
Council's actions	Have the actions of council created an expectation that no action would be taken in a specific set of circumstances? Has the person responsible been advised that no action would be taken? Has council contributed to the offender's actions, e.g. by providing advice/approval to the activity?
Discretion to not take action based on the facts in issue and relevant material	Is a managed outcome a better alternative? No bias, actual or perceived should influence the decision to exercise discretion. Should discretion be exercised the reasoning should be recorded to support the decision. Council Authorised Officers are able to exercise discretion based on their delegations and authority.
Procedural fairness/natural justice	Has the offender been informed of the nature of the issue and allowed a right of reply? Due consideration of the reply is to be given and the investigation is to be conducted objectively.
Timing and delay	Is the offending action recent? Has there been significant delay in the investigation? Is the proposed action within the statutory limitation period for the offence?
Public interest (costs vs. benefits, likely success, effects – social and environmental)	Are there any mitigating circumstances which will impact on the outcome of any prosecution/legal proceedings? What council resources will be affected and how?

Policy title	Copper Chrome Arsenate (CCA) Management
Responsible manager(s)	Director Infrastructure Services
Contact officer(s)	Divisional Manager Works
Directorate	Infrastructure Services
Approval date	TBA
Focus area	<i>Liveable Communities</i> Objective 2.2: Shared responsibility for community safety
Delivery Program link	<i>Community Spaces</i> L5.2 Manage and maintain a safe, sustainable and accessible range of community spaces
Operational Plan link	<i>Community Spaces</i> L5.2.1 Undertake maintenance program

Purpose

Eurobodalla Shire Council's policy was developed to ensure that the future use of Copper Chrome Arsenate (CCA) treated timber in new structures is limited to those applications specifically approved by the Australian Pesticides and Veterinary Medicines Authority (APVMA).

Legislative requirements and community expectations in relation to the use of Copper Chrome Arsenate (CCA) treated timber products changed following an inquiry by the Australian Pesticides and Veterinary Medicines Authority (APVMA) in 2005 into the re-registration of CCA as an approved pesticide.

To further tighten the use of CCA for treating timber new restrictions were put in place from 1 July 2012, and CCA has now been declared a restricted chemical product by the APVMA.

CCA is not approved for use in garden furniture, picnic tables, exterior seating, children's play equipment, patio and domestic decking, and handrails.

CAA treated timber products remain approved for use in structural situations such as piling and other structure foundations, residential construction, industrial and commercial construction, rural and farm use, fencing, poles, landscaping timbers, fresh and salt water structures, signage, and boat construction.

Policy aims

- Promote an integrated framework for dealing with CCA products
- Ensure consistency in the manner in which the Council deals with CCA products
- Ensure compliance with legislative requirements under the *Agriculture & Veterinary Chemicals (Administration) Act 1992*
- Promote awareness of the requirements of the Act with respect to the use of CCA
- Take such steps as are appropriate to ensure the safe removal of CCA products such as playground equipment and picnic tables and to dispose of them at licenced landfill sites
- Make Council's policies and requirements for CCA readily accessible and understandable to the public.

Policy details

1	Application The approved use of CCA to treat timber to be used in structures has been restricted by commonwealth legislation to situations where human contact, and particularly contact by children, is not likely to be on a frequent and intimate basis.
2	Legislation Eurobodalla Shire Council will comply with the <i>Agriculture & Veterinary Chemicals (Administration) Act 1992</i> .

Implementation

Requirements		Responsibility
1	Council acknowledges that timber products containing CCA are broadly spread throughout the community, however the future use of CCA treated timber in new structures must be limited to those applications specifically approved by the APVMA in the product registration report dated March 2005.	Council
2	The ongoing use and retention of existing structures using CCA treated timber is not affected by recent legislative changes, however Council supports the progressive demolition and removal of CCA treated timber products in situations where CCA products are no longer approved for use.	Council
3	Council encourages private and commercial owners of CCA treated products used in situations such as garden furniture, picnic tables, exterior seating, children's play equipment, patio and domestic decking and handrails, which are no longer an approved use for CCA products, to consider replacing such items or otherwise isolating such items from direct contact with humans, and particularly children.	Council
4	Council acknowledges that the future use of CCA treated products in Council infrastructure projects consistent with APVMA approved uses may be warranted to ensure that the life cycle and structural integrity of projects is achieved at a cost affordable to the community. Each infrastructure project proposed by Council will be assessed for material selection on a merit basis, recognising a preference for materials with a low potential toxicity.	Council
5	Council supports the reuse of CCA treated timber from demolished structures in situations or structures that comply with the approved uses for CCA as specified by the APVMA 2005 registration for CCA.	Council
6	Staff Under supervision, relevant Council staff will be responsible for ensuring that this Policy is implemented within their work area once appropriate training has been received.	Council officers
7	Concerns Public concerns communicated to Council in relation to this Policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints Policy. These records will be used to determine any follow-up actions and analyse the history of reported public concerns.	Council officers

8	Consultation Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, statutory and industry bodies. Public submissions regarding this Policy are invited for consideration during the exhibition period.	As applicable
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Review

The Policy will be automatically revoked at the expiration of twelve months after the declaration of the poll for the next general NSW Local Government election, unless Council revokes it sooner.

Note: Automatic revocation of the Policy is provided for by Section 165(4) of the Local Government Act 1993. The next general local government election is expected to be held in September 2020.

This Policy may also be reviewed and updated as necessary if legislation requires it; or when Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages Copper Chrome Arsenate treated timber products.

Reviews of the effectiveness of this Policy could include the following:

Performance indicator	Data source(s)
Delivery Program/Operational Plan outcomes achieved	Council reporting
Concerns or complaints registered	Council records
Customer feedback, survey responses	Surveys
Internal or external audit	Audit

Governance

This Policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies and guidelines.

Related legislation and policies

Name	Link
Local Government Act 1993	Local Government Act 1993
Agriculture & Veterinary Chemicals (Administration) Act 1992	Agriculture & Veterinary Chemicals (Administration) Act 1992

Related external references

Name	Link
Office of Local Government	www.olg.nsw.gov.au
Australian Pesticides & Veterinary Medicines Authority's New restrictions in place for arsenic-treated timber	APVMA's New restrictions in place for arsenic-treated timber

Change history

Version	Approval date	Approved by	Minute No	File No	Change
1	27 Sep 2005	Council	05/386	06.0381	Policy adopted
2	23 Jul 2013	Council	13/172	E13.7095	Updated Policy Template, updated review date, updated references and links – report O13/112
3	dd mmm 2016	Council	TBA	E16.0297	Reviewed and updated (start of new Council term)

Internal use

Responsible officer		Director Infrastructure Services		Approved by	Council
Minute #	TBA	Report #	TBA	Effective date	TBA
File	E06.0375 E16.0297	Review date	Sep 2020	Pages	4

POLICY

Policy name	Pesticides/Herbicides Use Notification Plan
Responsible manager(s)	Director, Infrastructure Services
Contact officer(s)	Divisional Manager, Works
Directorate	Infrastructure Services
Approval date	TBA
Focus area	<i>Liveable Communities</i> Objective 2.2: Shared responsibility for community safety
Delivery program link	<i>Community Spaces</i> L5.2 Manage and maintain a safe, sustainable and accessible range of community spaces
Operational plan link	<i>Community Spaces</i> L5.2.1 Undertake maintenance program

Purpose

In accordance with requirements under the *Pesticides Regulation 2009*, Council is required to have a Pesticides/Herbicides Plan prepared and available to the public.

The aim of the Plan is to meet the community's right to know about pesticide applications made to public places that are owned or controlled by Council. Public places are areas that the public is entitled to have access to (whether or not on payment of fee) and are described in detail in the *Pesticides/Herbicides Use Notification Plan Code of Practice*.

The Code allows members of the community to take action to avoid contact with pesticides, if they wish. Council ensures that pesticides are applied to public places in a safe, responsible manner without harm to the community or the environment.

Policy Aims

- Promote an integrated framework for dealing with pesticide use on Council owned or controlled land
- Ensure consistency and fairness in the manner in which the Council deals with pesticide use on Council owned or controlled land
- Ensure compliance with legislative requirements under the *Local Government Act 1993*
- Promote awareness of the requirements of the *Act* with respect to the use of pesticides on Council owned or controlled land
- Take such steps as are appropriate to ensure pesticides are applied to public places in a safe, responsible manner
- Make Council's policies and requirements for pesticide use readily accessible and understandable to the public.

Policy details

1	Application This Policy refers the community to the Pesticides/Herbicides Use Notification Plan Code of Practice, which sets out how Council will notify members of the community of pesticide applications made or allowed by Council in public places that it owns or controls.
2	Legislation Eurobodalla Shire Council will comply with Pesticides Regulation 2009

Implementation

Requirements		Responsibility
1	Code of Practice This Policy will be implemented by following Council's <i>Pesticides/Herbicides Use Notification Plan Code of Practice</i> , which specifies in detail the plan, procedures and matters to be considered and is to be made available in Council's Policy Register – Codes of Practice.	Council officers
2	Public Places For the purposes of this Policy, the following categories of outdoor public spaces within the Council's local government area include: <ul style="list-style-type: none"> • Low use public reserves (including Crown Reserves under Council's care and control, operational land and natural areas) • Parks and gardens (including Crown Reserves under Council's care and control) • Playgrounds; • Sporting fields and ovals • Road verges • Laneways and pathways • Drains and easements • Caravan/holiday parks • Cemeteries • Swimming pool grounds • Public buildings. 	Council officers
3	Staff Under supervision, relevant Council staff will be responsible for ensuring that this Policy is implemented within their work area once appropriate training has been received.	Council officers
4	Concerns Public concerns communicated to Council in relation to this Policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints Policy. These records will be used to determine any follow-up actions and analyse the history of reported public concerns.	Council officers

5	Consultation Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, statutory and industry bodies. Public submissions regarding this Policy are invited for consideration during the exhibition period.	As applicable
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Review

The Policy will be automatically revoked at the expiration of twelve months after the declaration of the poll for the next general NSW Local Government election, unless Council revokes it sooner.

Note: Automatic revocation of the policy is provided for by Section 165(4) of the Local Government Act 1993. The next general local government election is expected to be held in September 2020.

This Policy may also be reviewed and updated as necessary if legislation requires it; or when Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages Pesticides/Herbicides Use Notification.

Reviews of the effectiveness of this Policy could include the following:

Performance indicator	Data source(s)
Public concerns or complaints, feedback survey responses	Council records
Internal or external audit	Audit

Governance

This Policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies, and guidelines.

Related legislation and policies

Name	Link
Eurobodalla Shire Council's Pesticides/Herbicides Use Notification Plan Code of Practice	ESC Pesticides/Herbicides Use Notification Plan
Local Government Act 1993	Local Government Act 1993
Pesticides Regulation 2009	Pesticides Regulation 2009

Related external references

Name	Link
Office of Local Government	www.olg.nsw.gov.au
Environmental Protection Authority	www.environment.nsw.gov.au/epa/

Change history

Version	Approval date	Approved by	Min No	File No	Change
1	20 Dec 2006	Council	06/464	91.2669	Pesticide Use Notification Plan reviewed (Report W06/147)
2	10 Sep 2013	Council	13/272	E13.7095	Reviewed and updated. Renamed to include 'Herbicide'
3	dd mmm 2016	Council	TBA	E16.0297 E06.0375	Reviewed and updated (start of new Council term). Renamed to include 'Use Notification Plan' in line with Code of Practice.

Internal use

Responsible officer		Director, Infrastructure Services		Approved by	Council
Minute #	TBA	Report #	TBA	Effective date	TBA
File	E16.0297 E06.0375	Review date	Sep 2020	Pages	4

Policy title	Water Saving Incentives
Responsible manager(s)	Division Manager Water and Sewer
Contact officer(s)	Sustainability Coordinator
Directorate	Infrastructure Services
Approval date	
Focus area	Sustainable Communities
Delivery Program link	4.2 Use our water wisely

Purpose

Council promotes water conservation and demand management as essential for ensuring efficient use of our valuable water resources and to improve environmental outcomes.

Best Practice Management requires active intervention by supporting appropriate demand management measures such as retrofit programs and rebates for water efficient appliances.

Policy aims

The use of water-efficient fixtures and water-efficient appliances in urban areas with reticulated water supply can have significant environmental, social and financial benefits for both Council and the community.

These benefits include noticeable reductions in:

- water bills for consumers
- water extractions from rivers
- stormwater and treated sewage effluent discharged to local waterways
- demand on existing water supplies, reducing the likelihood of water restrictions
- demand on existing water, sewer and stormwater infrastructure, delaying the requirement for expensive infrastructure upgrades.

Policy details

1	Application This policy applies to customers within the Eurobodalla Local Government Area (LGA) who are connected to the reticulated water supply.
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Implementation

Requirements		Responsibility
1	Incentives Incentives for the purchase and installation of water-saving devices, appliances and systems include eligible: <ul style="list-style-type: none"> • Dual flush toilets • Washing machines Detailed information about current incentives including application forms, Terms and Conditions and Frequently Asked Questions, can be found at Council's website www.esc.gov.au	Council officers
2	Incentives cap The maximum amount of water saving incentive rebates under this policy is \$2000 per customer.	Council officers
3	Staff Under supervision, relevant Council staff will be responsible for ensuring that this policy is implemented appropriately within their work area, after they have received appropriate training to do so.	Council officers
4	Concerns Public concerns communicated to Council in relation to this policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints policy. These records will be used to determine any follow-up actions and analyse the history of reported public concerns.	Council officers
5	Consultation Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, statutory and industry bodies. Public submissions regarding this policy are invited for consideration during the exhibition period.	Council officers

Review

The policy will be automatically revoked at the expiration of twelve months after the declaration of the poll for the next general NSW local government election, unless Council revokes it sooner.

Note: Automatic revocation of the policy is provided for by section 165(4) of the Local Government Act 1993. The next general local government election is expected to be held in September 2020.

This policy may also be reviewed and updated as necessary when legislation requires it; or Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages water saving incentives.

Reviews of the effectiveness of this policy could include the following:

Performance indicator	Data source(s)
Internal or external audit	Audit

Delivery Program outcomes achieved	Council reporting
Concerns or complaints registered	Council records
Number of applications received	Council records

Governance

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies, and guidelines.

Related legislation and policies

Name	Link
NSW Best Practice Management of Water Supply and Sewerage Guidelines	www.water.nsw.gov.au/Urban-water/Country-towns-program/Planning-and-best-practice/default.aspx
Related Council Policy	www.esc.nsw.gov.au/inside-council/council/council-policies
Local Government Act 1993	www.legislation.nsw.gov.au/maintop/view/inforce/act+30+1993+cd+0+N
Information on Council website	www.esc.nsw.gov.au
Application for Washing Machine rebate	www.esc.nsw.gov.au
Application for toilet rebate	www.esc.nsw.gov.au

Related external references

Name	Link
Office of Local Government	www.olg.nsw.gov.au

Change history

Version	Approval date	Approved by	Min No	File No	Change
1	22 Sep 2009	Council	09/291	E09.3418	Policy commenced
2	10 Sep 2013	Council	13/272	E13.7095	Reviewed and updated (start of new Council term)
3	dd mmm 2016	Council	TBA	E16.0297 E06.0113	Reviewed and updated (start of new Council term)

Internal use

Responsible officer	Director Infrastructure Services			Approved by	Council
Minute #	TBA	Report #	TBA	Effective date	TBA
File	E06.0113 E16.0297	Review date	Sep 2020	Pages	3

Policy title	Gathering Information for Risk Management
Responsible manager(s)	Director Finance & Business Development
Contact officer(s)	Divisional Manager Governance & information
Directorate	Finance and Business Development
Approval date	TBA
Focus area	Support Services
Delivery Program link	SS1.2 Maintain a sound governance framework within which Council operates
Operational Plan link	SS1.2.1 Manage council risk and insurances

Purpose

Effective risk management relies on identifying in advance any potentially harmful aspects which could arise from operations; analysis of the likely consequences if an incident were to occur; and implementation of controls to prevent it occurring. Therefore it is essential that council has in place a systematic process to consistently record information about risks, hazards and incidents to enable it to respond in a coordinated manner.

Collection and retrieval of accurate information is also critical in the defence of claims. Councils are faced with various types of incidents that may result in a complaint or claim against the council, including public liability, professional indemnity, or workers compensation claims.

To defend these claims, a council is required to show that it acted in a manner which was not in breach of its duty of care. Often, the only proof to support this position is the testimony of council officers and council's records of its activities. Some court decisions have been handed down against councils due to the inadmissibility of records as acceptable evidence, or the failure to be able to produce records and information that could have supported the council's defence.

This policy recognises the importance of gathering information and records in the day-to-day operations of council and the management of risk and incidents, and of those records meeting acceptable evidence standards for court. This policy aims:

Policy aims

- To deliver an integrated framework for gathering information for risk management.
- To facilitate the gathering of accurate and complete information to mitigate risk, investigate incidents, and defend possible claims.
- To ensure a well-organised, comprehensive and well-documented risk management system that highlights Council's regard for its duty of care to the public.
- To promote awareness of recording information with minimum data requirements to render it admissible for evidence in defence of claims.
- To protect Council's financial position by strengthening Council's defence of claims and reducing the occurrence of litigation to resolve claims.
- To meet operational business needs; legislative compliance; accountability requirements; and community expectations.

Policy details

1	Application
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	This policy applies to all employees, volunteers and contractors of Eurobodalla Shire Council.
2	<p>Legislation</p> <p>Eurobodalla Shire Council complies with the following legislation:</p> <p>a) The <i>Local Government Act 1993</i>, Section 739A which requires Councils to retain, preserve and destroy records in accordance with any approved standards, including the General Retention & Disposal Authority, Authority Number GA39.</p> <p>b) <i>State Records Act 1998</i>, various Sections impose duties on the General Manager of each public office to comply with the Act in regards the keeping of records;</p> <p>c) <i>Privacy and Personal Information Protection Act 1988</i>, to provide for the protection of personal information and for the protection of the privacy of individuals generally.</p> <p>d) <i>NSW Civil Liability Act 2002</i>. This Act makes provision for the recovery of damages for death or personal injury caused by the fault of a person and to amend the legal profession Act in relation to costs in civil claims.</p> <p>(See Appendix 1 for additional applicable Legislation)</p>
3	<p>Statewide Mutual - Best Practice</p> <p>The Risk Management process encourages utilising Statewide Mutual's Best Practice Manual - Gathering Information for documentation and assisting groups within Council. Council will (within its budgetary constraints and using existing information systems available to it), endeavour to ensure that accurate and systematic information is collected and retained in accordance with the guidelines outlined in Statewide Mutual's Best Practice Manual.</p>
4	<p>Procedure</p> <p>Procedures for the gathering of information and data have been developed to assist in risk and incident management and defending a possible claim against Council. The information collection process and the quality of the information must be of sufficient standard to ensure that the information constitutes admissible evidence. The Gathering Information Procedure (included in the Code of Practice) identifies minimum data requirements and will also identify staff training to meet the objectives.</p>

Implementation

Requirements		Responsibility
1	<p>Code of Practice</p> <p>This policy will be implemented by following Council's Gathering Information Code of Practice, which specifies in detail the plan, procedures and matters to be considered.</p>	Council officers
2	<p>Staff</p> <p>Under supervision, relevant Council staff will be responsible for ensuring that this policy is implemented appropriately within their work area, after they have received appropriate training to do so.</p>	Council officers
3	<p>Concerns</p> <p>Public concerns communicated to Council in relation to this policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints policy. These records will</p>	Council officers

	be used to determine any follow-up actions and analyse the history of reported public concerns.	
4	Consultation Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, statutory and industry bodies. (Describe any specific consultation that may occur in relation to this policy and who will be involved.) Public submissions regarding this policy are invited for consideration during the exhibition period.	As applicable

Review

The policy will be automatically revoked at the expiration of twelve months after the declaration of the poll for the next general NSW local government election, unless Council revokes it sooner.

Note: Automatic revocation of the policy is provided for by section 165(4) of the Local Government Act 1993. The next general local government election is expected to be held in September 2020.

This policy may also be reviewed and updated as necessary when Statewide Mutual's Best Practice Manual is updated; or when Council's functions, structure or activities change; or when technological advances or new systems change the way Council manages Gathering Information for Risk Management.

Reviews of the effectiveness of this policy could include the following:

Performance indicator	Data source(s)
Risk Management Internal Audit	Internal Audit
Complaints	Council Records
Statewide Mutual Public Liability Self-Audit and Verification Process	Audit
Defended Claims	Council Records

Definitions

Word/ Acronym/ Phrase	Definition
Minimum Data	Requirements for the formatting and documentation of records to ensure admissibility as evidence in court.
Duty of Care	The responsibility or legal obligation of a person or organisation to take reasonable care to avoid foreseeable acts or omissions to be likely to cause harm to others. It is the first element that must be established to proceed with an action in negligence.
Incident	A distinct occurrence or event during which something actually happens, or could have happened (e.g. "near-miss"), possibly as a result of something else. An incident may be an occurrence of seemingly minor importance that can lead to serious consequences.
Hazard	Any situation, substance, activity, event, or environment that could potentially cause harm.

Risk	The foreseeability of a potential event occurring, assessed by both the likelihood of it actually occurring and its potential severity.
Workers Compensation Claim	Claim for work-related injury or illness of council worker.
Public Liability Claim	Claim for injury, illness, loss or damage suffered by a member of the public resulting from Council negligence or omission.
Professional Indemnity Claim	Claim for injury, illness, loss or damage suffered by a member of the public resulting from council negligence or omission in technical advice or professional design or service delivery.

Governance

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies, and guidelines.

Related legislation and policies

Name	Link
Code of Practice	www.esc.nsw.gov.au/site/Publications/Strategies/PolicyReg/ViewCodes.aspx
Risk Management Policy	www.esc.nsw.gov.au/site/Publications/Strategies/PolicyReg/Default.aspx
Local Government Act 1993	www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/
State Records Act 1998	www.austlii.edu.au/au/legis/nsw/consol_act/sra1998156/
Privacy and Personal Information Protection Act 1988	www.austlii.edu.au/au/legis/nsw/consol_act/papipa1998464/
Civil Liability Act 2002	www.austlii.edu.au/au/legis/nsw/consol_act/cla2002161/

Related external references

Name	Link
Office of Local Government	www.olg.nsw.gov.au/
Statewide Mutual	www.statewide.nsw.gov.au/
Australian Standard AS/NZS ISO 31000:2009 Risk Management - Principles and guidelines	http://infostore.saiglobal.com/store/Details.aspx?ProductID=1378670

Change history

Version	Approval date	Approved by	Min No	File No	Change
1	22 Sep 2009	Council	09/291	E09.2418	Policy reviewed and retained (G09.99)
2	27 Aug 2013	Council	13/246	E13.7095	Updated to new Policy Template, updated review date, updated links
3	dd mmm 2016	Council	TBA	E16.0297 E06.0380	Reviewed (start of new Council term) with minor referencing updates.

Internal use

Responsible officer		Director Finance and Business Development		Approved by	Council
Minute #	TBA	Report #	TBA	Effective date	TBA
File	See list E16.0297	Review date	Sep 2020	Pages	6

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Appendix 1

Other Legislation which is relevant to this policy includes:

NSW Evidence Act 1995

This Act sets out the rules of evidence. The Act applies to proceedings within NSW courts, and before persons or bodies required to apply the laws of evidence.

Electronic Transactions Act 1999

This Act provides the regulatory framework to recognise the importance and overall use of electronic transactions in the activities of government, business and general community.

NSW Evidence on Commission Act 1995

This Act applies in relation to the taking of evidence outside the State for the purposes of proceedings in the State and in relation to the taking of evidence in the State for the purposes of proceedings outside the State.

NSW Legal Profession Act 2004

The purposes of this Act are to provide for the regulation of legal practice in this jurisdiction in the interests of the administration of justice and for the protection of clients of law practices and the public generally, and to facilitate the regulation of legal practice on a national basis across State and Territory borders.

Orders for Discovery

In a legal action, the process of identifying and disclosing to the other party all of the documents relevant to the issues in the proceedings.

There is also a vast array of Commonwealth and State legislation that require councils to maintain an efficient and effective records management system, e.g. taxation and payroll records, workplace injury or illness incidents, environmental incidents, effluent re-use records, planning instruments, etc.