

<b>Policy title</b>	Pathways and Shared Pathways Risk Management Policy
<b>Responsible manager(s)</b>	Director Infrastructure Services
<b>Contact officer(s)</b>	Divisional Manager Works
<b>Directorate</b>	Infrastructure Services
<b>Approval date</b>	9 August 2022
<b>Outcome area</b>	4 Our connected community through reliable and safe infrastructure networks
<b>Strategy</b>	4.1 Provide integrated and active transport networks to enable a connected and accessible Eurobodalla
<b>Delivery Program</b>	4.1.5 Promote active and inclusive transport through the provision and enhancement of the pathway network, as guided by the Pathway Strategy and asset management plan
<b>Operational Plan</b>	4.1.5.2 Build and renew the pathway network

## Purpose

This Policy provides for the management of risks associated with Council's formed pathway network.

Council has a duty of care to take reasonable measures within the limitations of its budget to manage the risks arising from defects on Council's formed footpath and shared pathway networks.

The *Civil Liability Act 2002 (the Act)* provides special nonfeasance protection for roads authorities such as Council. Section 45 of *the Act* stipulates that a roads authority is not liable for harm arising from a failure to act in respect of maintenance of its roads and road reserves, unless at the time of the alleged failure the roads authority had actual knowledge of the particular risk which resulted in the harm. The importance of this defence is that a roads authority, such as Council, can in some circumstances avoid liability for injuries or damage related to the state of repair or maintenance of its roads and road reserves.

Section 42 of *the Act* also makes allowance for Council's ability to carry out its duty of care as being limited by the financial and other resources which are reasonably available to exercise its functions. To rely on this defence, Council is required to show evidence of its compliance with the general procedures and applicable standards for the exercise of its functions, such as risk management of its pathway networks.

It is accepted that the removal of all risk is not practically achievable. The systems implemented by Council to provide the management of risks will be based on prioritising works within the limited budgets available to Council.

## Policy aims

This Policy aims to:

- promote an integrated framework for dealing with pathways risk management;
- ensure consistency and fairness in the manner in which Council deals with pathways risk management;
- ensure compliance with legislative requirements under the *Local Government Act 1993*, *The Roads Act 1993* and the *Civil Liability Act 2002*;

- promote awareness of the requirements of the *Civil Liability Act 2002* with respect to acceptance by the community and the Court of the shared duty of care for pathway users to take reasonable care for their own safety when using these facilities;
- make Council's policies and requirements for pathways risk management readily accessible and understandable to the public.

### Policy details

<b>1</b>	<p><b>Application</b></p> <p>This Policy provides for the appropriate risk management of Council's formed pathway network.</p>
<b>2</b>	<p><b>Legislation</b></p> <p>Eurobodalla Shire Council will comply with the <i>Local Government Act 1993</i>, <i>Roads Act 1993</i> and <i>Civil Liability Act 2002</i>.</p>
<b>3</b>	<p><b>Duty of Care</b></p> <p>Council will act reasonably in its endeavour to minimise injury and damage occurring as a consequence of Council's responsibilities.</p> <p>This concept requires acceptance by the community and the Court, of the shared duty of care for pedestrians, cyclists and other pathway users to take reasonable care when using the pathways network.</p>
<b>4</b>	<p><b>Risk Management System</b></p> <p>In relation to Council's formed pathway network, Council has developed appropriate systems to manage and maintain its network by:</p> <ol style="list-style-type: none"> <li>recording all formed pathway assets under Council's control;</li> <li>identifying defects through formal inspection of its pathway network;</li> <li>rating the hazard associated with the identified defect;</li> <li>prioritising the work based on the hazard rating and the efficiency of undertaking works;</li> <li>keeping appropriate records of actions taken;</li> <li>managing customer inquiries relating to formed pathways.</li> </ol> <p>It is accepted that the removal of all risk is not practically achievable. The systems implemented by Council will be based on prioritising works within the limited budgets available to Council.</p> <p>All defects are entered into and prioritised by Council's maintenance system from which a maintenance schedule is produced. Works are prioritised based on the highest defect rating, taking account of the efficiency of undertaking the work and the available budget limitations.</p>
<b>5</b>	<p><b>Outcomes</b></p> <p>The desired outcomes are to provide:</p> <ol style="list-style-type: none"> <li>an approach that facilitates safer pathways;</li> <li>a proactive system, taking account of the limited financial and other resources reasonably available to Council, to better manage the risks inherent in services provided by Council as a roads authority;</li> <li>a reduced potential for public liability claims against Council and the community it represents.</li> </ol>

<b>6</b>	<p><b>Financial and Resources</b></p> <p>Funding for the maintenance and renewal of Council’s formed pathway network is budgeted annually and details of this budget are contained within Council’s Operational Plan. This Plan is advertised for public comment prior to being considered and adopted by Council.</p> <p>Council has limited resources and has arranged these resources to undertake the work efficiently, based on geographic constraints. Council utilises a sector maintenance approach to achieve this outcome for routine maintenance issues.</p> <p>Council has also developed a pathway strategy that identifies a significant amount of new pathways as being desirable to provide to the community. These new pathways will be provided on a priority basis within the limited capital funding program as determined by Council within the annual Operational Plan.</p>
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**Implementation**

Requirements	Responsibility
<p><b>1 Implementation requirement</b></p> <p>Council will:</p> <ul style="list-style-type: none"> <li>• record all formed pathway assets under Council’s control;</li> <li>• identify defects through formal inspection of its pathway network;</li> <li>• rate the hazard associated with the identified defect;</li> <li>• prioritise the work based on the hazard rating and the efficiency of undertaking works and available budget;</li> <li>• keep appropriate records of actions taken;</li> <li>• manage customer enquiries relating to formed pathways;</li> </ul> <p>establish an annual budget for the maintenance and renewal of the pathway network.</p>	<p>Divisional Manager Works</p>
<p><b>2 Staff</b></p> <p>Under supervision, relevant Council staff will be responsible for ensuring that this Policy is implemented within their work area, after they have received relevant training and instruction on how to do so.</p>	<p>Council officers</p>
<p><b>3 Concerns</b></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 be used to determine any follow-up actions and analyse the history of reported public concerns.</p>	<p>Council officers</p>
<p><b>4 Consultation</b></p> <p>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.</p>	<p>As applicable</p>

**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.

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 Pathways Risk Management.

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

Performance indicator	Data source(s)
Customer Concerns	Council records
Customer Feedback Survey Responses	Surveys
Internal or external audit	Audit
Number of incidents on pathways	Council records
Number of liability claims	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
Eurobodalla Shire Council <i>Risk Management Policy</i>	<a href="#">Council policies   Eurobodalla Council website (nsw.gov.au)</a>
<i>Local Government Act 1993</i>	<a href="#">Local Government Act 1993</a>
<i>Roads Act 1993</i>	<a href="#">Roads Act 1993</a>
<i>Civil Liability Act 2002</i>	<a href="#">Civil Liability Act 2002</a>

### *Related external references*

Name	Link
Office of Local Government	<a href="http://www.olg.nsw.gov.au/">www.olg.nsw.gov.au/</a>
Statewide Mutual's <i>Best Practice Manual</i> – <i>Footpaths (v6 August 2019)</i>	<a href="https://www.statewidemutual.com.au/">https://www.statewidemutual.com.au/</a>

*Change history*

Version	Approval date	Approved by	Min No	File No	Change
1	24 Nov 2009	Council	09/369	E09.3418	Policy adopted
2	27 Aug 2013	Council	13/246	E13.7095	Updated to Template, review date, references and links. Report O13/131.
3	09 Aug 2022	Council	22/190	E16.0297 E06.0375	Reviewed and updated (start of new Council term). GMR22/080

*Internal use*

Responsible officer	Director, Infrastructure Services		Approved by	Council	
Minute	22/190	Report	GMR22/080	Effective date	9 Aug 2022
File	E16.0297 E06.0375	Review date	Jun 2022	Pages	5