

Code title	Gathering Information for Risk Management
Responsible manager(s)	Director Commercial and Corporate Services
Contact officer(s)	Divisional Manager Governance & Administrative Services
Directorate	Commercial and Corporate Services
Approval date	Xx June 2018
Outcome area	9. Innovative and proactive leadership
Strategy	9.2 Ensure financial sustainability and support the organisation in achieving efficient ongoing operations
Delivery Program	9.2.3 Provide administrative, technical and trade services to support the organisation
Operational Plan	9.2.3.4 Provide risk and insurance services

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 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 the council's records of its activities.

Courts and magistrates have standards of admissible evidence, which must be met if records are to be introduced as evidence. The rejection of data and information by the courts has been primarily due to incorrect recording and collection techniques. 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 Code 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. To ensure our information is admissible, collection processes and quality of accurate, consistent and factual information must be to a sufficient standard. This Code supports the Gathering Information for Risk Management Policy and sets out the minimum requirements for data collection based on the Statewide Best Practice Manual.

Code aims

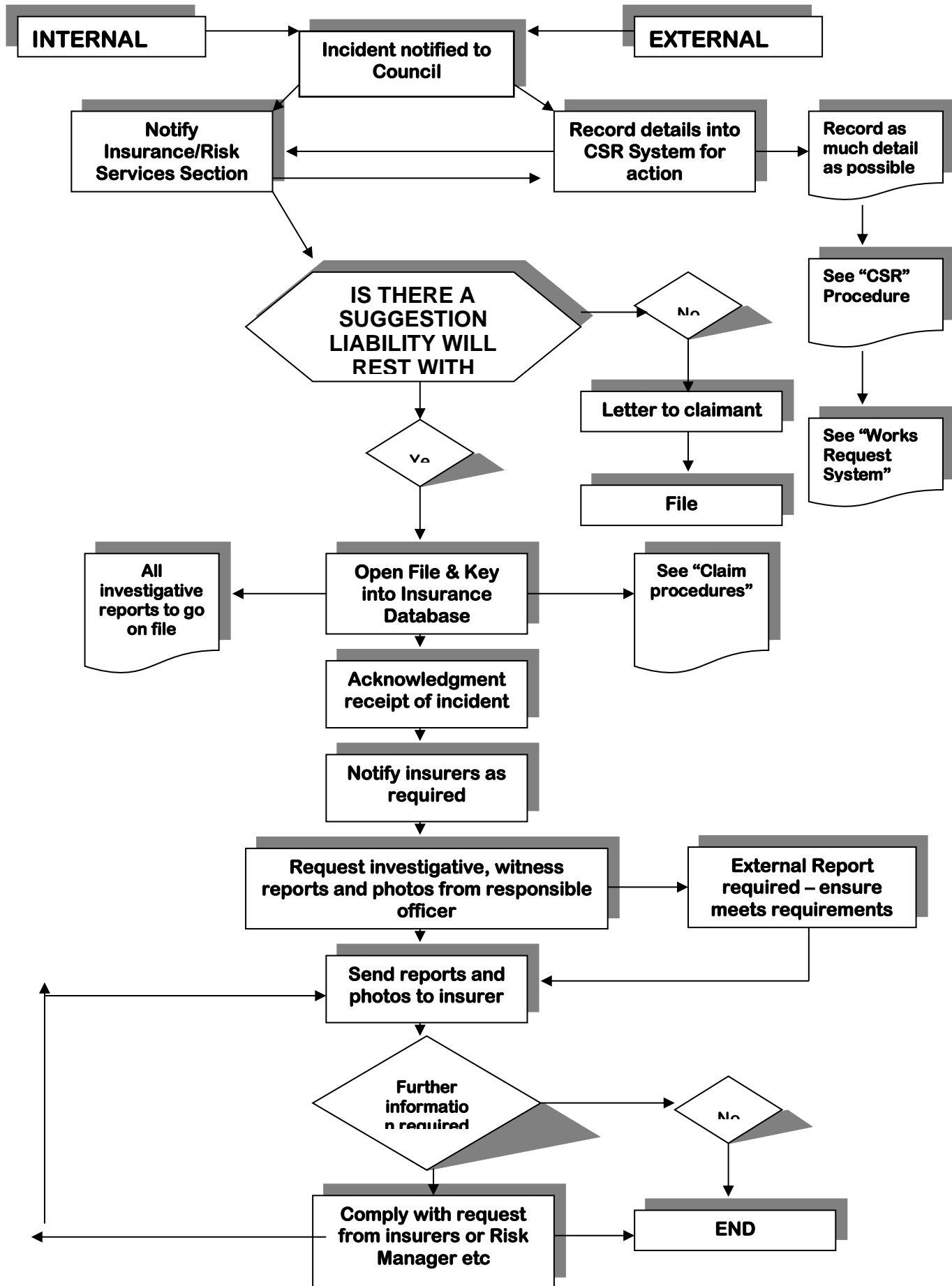
- To provide an effective risk management tool in the defence of claims.
- To deliver an integrated framework for gathering information for risk management.
- To facilitate the gathering of accurate and complete information to mitigate risk, investigate incidents, and defend possible claims.
- To ensure 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	<p>Application</p> <p>This policy applies to all employees, volunteers and contractors of Eurobodalla Shire Council.</p>
2	<p>Legislation</p> <p>Eurobodalla Shire Council complies with the following legislation:</p> <ul style="list-style-type: none">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.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;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.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>(See Appendix 1 for additional applicable Legislation)</p>
3	<p>Statewide Mutual - Best Practice Manual</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 the Best Practice Manual.</p> <p>The Statewide Best Practice Manual, "Gathering Information" was developed to assist councils in collecting and gathering information based on minimum requirements. The Code of Practice in conjunction with the Best Practice Manual will ensure that the data collected is collected in such a way that in the event Council is required to defend itself in court, the information used is admissible; identifies a clear audit trail; provides evidence that Council has not breached its duty of care and that Council has acted in good faith.</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.</p> <p>The Gathering Information Procedure (see flow chart) outlines the incident reporting process of claims administration, identifies minimum data requirements, and will identifies staff training to meet the objectives.</p>
5	<p>Information checklist</p> <p>The table of Information Source (see Information Checklist) outlining minimum data sets for each source will be utilised.</p>

INCIDENT REPORTING PROCEDURE

GATHERING INFORMATION



Information Checklist

**GATHERING INFORMATION - BEST PRACTICE
INFORMATION CHECKLIST – INTERNAL DOCUMENTS**

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
1. Works Programme	A strategic document that prioritises works, linking timeframe and resources for individual capital works, projects and/or maintenance activities	Used to highlight Council's level of commitment to its infrastructure relative to its financial strength. Could be used to defend a statement claiming inaction by Council	<ul style="list-style-type: none"> Financial year and date of preparation Version number and date of preparation Council minute of change (if appropriate)
2. Customer Service Request	A document requesting or identifying work to be completed by Council as a result of a potential risk found by an employee or a member of the public	Used to highlight Council's identification of risks programme. Could be used to defend a statement claiming inaction by Council	<ul style="list-style-type: none"> Date received and completed Customer name and address Name of originator Specific location Unique identifier Priority Action taken Date action taken Name of action officer Name of referral officer/s
3. Inspection Record	A pro-forma document used by Council Officers to report on the general condition of the infrastructure and assets of Council	Used to highlight Council's identification of risks programme. Could be used to show that Council was there, has inspected and made recommendations including repair, thus able to defend a statement claiming negligence by council	<ul style="list-style-type: none"> Date and time Name and signature of inspecting officer Inspecting officer's position and department Specific location Unique identifier Recoverable Defects List of recommendations Immediate action taken

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
4. Maintenance Management System	MMS is used for the planning, organising, directing and controlling of maintenance work. It was originally developed by the RTA for use on road maintenance.	Work scheduling can be used to defend a statement claiming inaction by Council. The system can also record the type of maintenance activity performed at any given time and location. This data could be used to defend a statement claiming inaction or negligence	<ul style="list-style-type: none"> • Daily running sheet recoverable • Date • Name and signature of originator • Activity • Work achieved • Location • Password protection

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
5. Environmental Due Diligence Programmes	A strategic document, dealing primarily with environmental management issues that prioritises works and sets out a timetable for completion	Used as a defence in the case of a breach under the EOP Act or a third party action claiming negligence or inaction by Council	<ul style="list-style-type: none"> • Date • Name and signature of originator • Endorsed by Council • Action plan with timetable for completion
6. Time and Plant Sheets	System of recording and allocating labour and plant costs, primarily for the purpose of payroll and project costing	Useful in verifying the location of staff and resources on a particular day. Can assist in defending a statement claiming negligence by Council	<ul style="list-style-type: none"> • Date • All changed crossed out to be initialed • Signature of employee • All relevant data to be completed
7. Diary Entries	Diary entries are often used to record details of the scene of an incident and are regularly the basis of the “initial Council Report”. They can be a source for information such as weather, times, locations, etc. as well as staff attendance	Used for evidence of staff attendance and actions taken or not taken. Could be used to defend a statement claiming negligence by Council	<ul style="list-style-type: none"> • Name • Date • Department • Unique identifier • Black Ink preferable • Photocopy should show book binding • Legible writing • All entries signed and dated (full date) • All activities noted

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
8. Work Practices/ Procedures	Written procedures produced by Council used to standardise Council's response to a particular task	Used in verifying that the work undertaken by Council is routine and is performed to a prescribed level of quality. Could be used to defend a statement claiming negligence by Council	<ul style="list-style-type: none"> • Recoverable • Details of implementation • Dates
9. Photographs	Pictures of specific locations for job	Used to provide evidence of the physical appearance of a defect or work at a particular point in time. Could be used to defend a statement claiming negligence by Council	<ul style="list-style-type: none"> • Name of Council • Date taken recorded preferably on the photograph • Name of Photographer and signature • Claim number or CSR Number • Location and direction facing at location • Digital – copy on camera • Digital - dates & time • Digital – reference to download date • Colour
10. Training Records	A detailed record of the training activities of all members of staff	Used to verify Council's committee to ensuring that staff are well trained. Could be used to defend a claim of negligence	<ul style="list-style-type: none"> • Name of employee and trainer • Employer of trainer • Date of training • Title of course(s)/Brief outline • Duration of course • Indication of successful completion/certificate, license, etc.
11. Standards	A predetermined "benchmark" by which results or performance is measured. The "benchmark" can be set either by the	Used to highlight Council's commitment to best practice within its resources. Could be used to defend a statement	<ul style="list-style-type: none"> • Name of standard • Citation number of standard

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
	particular industry or Council	claiming negligence by Council	<ul style="list-style-type: none"> • Name of issuing standards organisation • Date standard approved/implemented • Full copy of standard
12. Site Visits	Routine site inspection documented by the inspecting officer, noting conditions found at the site	Used to produce a detailed description of the condition of the site at a given point in time. Could be used to defend a statement claiming negligence and/or inaction by Council	<ul style="list-style-type: none"> • Date of visit • Location/address of site • Name(s) of inspector(s)/escorts • Field notes, photographs, diagrams all to be signed and dated
13. Interviews	As a result of a claim a recorded discussion between the relevant Council employees and the interviewing officer	This is used to extract fact which dictates the course of the investigation. Could be used to defend a statement claiming negligence and/or inaction by Council	<ul style="list-style-type: none"> • Name and job title of staff being interviewed • Date and time of interview • Location of interview • Witness to interview • Typed format for interview notes
14. Statements	Is a first party testimony of fact	It can be used as a record of an individual's account of the event. Could be used to defend a statement claiming negligence and/or inaction by Council	<ul style="list-style-type: none"> • Name of individual making statement • Job title of staff making statement • Date and time of statement • Location statement taken • Witness to statement • Signature of person making statement • Signature of person taking statement and witness

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
			<ul style="list-style-type: none"> • Typed format for statement
15. Annual Budget	A financial statement that details the projected income and expenditure for a financial year. It indicates the amount of financial resources able to be allocated to each function/project of Council	Used to highlight Council's level of commitment to its infrastructure relative to its financial strength. Could be used to defend a statement claiming inaction by Council.	<ul style="list-style-type: none"> • Date of report • Version of report • Financial year of report
16. Drawings or plans	A graphical representation of the work area, work method or location of the incident	Visually shows evidence of work planned. Shows standards to which the work is to be performed. Could be used to defend a statement claiming professional negligence, inaction or design failure	<ul style="list-style-type: none"> • Legible format (size) • Legend indicating name of draftsman, architect, company, scale, etc. • Reference to related drawings • Total number of drawings in set • Index number of drawing • Direction of north recorded on drawing
17. Maps	Defines the exact location of the event	Visually shows the location of the incident. Could be used to defend a statement claiming responsibility for an event where Council may not even be liable	<ul style="list-style-type: none"> • Date map was made • Person/organisation drafting map • Direction of north recorded on map • Scale of map • Area depicted by map • Legible format
18. Phone Logs	Record of calls made or received by Council officers where advice is given	Used as a record of proceedings, conversations where advice is given over the phone. Could be used to defend a statement claiming negligence and/or inaction by Council	<ul style="list-style-type: none"> • Recorded on relevant file • Date and time of call • Name of caller • Name of Officer • Summary of call

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
19. Work Method Statements	Standard operating procedure and hazard identification prior to undertaking tasks	Used as a record to demonstrate due diligence, work methods and procedures, assess risks and compliance with OH&S Legislation	<ul style="list-style-type: none"> • Created date • Activity • Description • Hazard identification • Safety controls • Environmental controls • Quality standards • Procedures in steps • Personnel • Duties & Responsibilities • Training and competency requirements • Workcover approvals/permits • Reference to codes/legislation/policies • Plant/equipment/PE • Maintenance checks • Review team, name signature, date • Supervisor, name, signature, date • Divisional manager, name, signature, date
20. Risk Assessments	Identifies hazards, risks and their likelihood and consequences	To demonstrate and comply to Council's duty of care to residents and employees of Council. Used to defend Council's actions/inactions for mitigating risks inherent in tasks, procedures and processes.	<ul style="list-style-type: none"> • Report Number • Consultation • Department/Division/Section • Location • Assessment date • Facilitator • Task/Activity/Use • Item of Plant • Hazard from Hazard checklist

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
			<ul style="list-style-type: none"> • Exposure Frequency • Consequences • Risk Controls • Risk Rating • Control measures • Responsible person • Completion date • Checked approval officer • date approved • Review date • Signature of approving officer • Signature of Facilitator
21. Policies	Addresses commitment, resources, tools and corporate governance of the organisation	Gives guidance to management and staff to comply with policy wording based on a set standard across the organisation. Use to defend claims for actions or inactions.	<ul style="list-style-type: none"> • Reason for Policy • Details of Policy • Date of meeting • Policy co-ordinator • Consultation • Approval date • Review date • References to other documents • Significance for review • Implementation process • Access • Signature of manger
22. Codes of Practice	Outlines methods, roles, responsibilities, steps and resources to undertake activities or tasks	Used to defend claims and give guidance to staff on procedures and processes required.	<ul style="list-style-type: none"> • Name of Code • Details of Code • Date of Code • Code – Coordinator • Code review date • Signature of officer • Minute Number
23. Audits	Used as a guide for continual compliance to determine the effectiveness of the quality, safety or	Used to demonstrate compliance of inspections and quality controls.	<ul style="list-style-type: none"> • Location • Inspection • Signature • Date of Inspection

INFORMATION SOURCE	DESCRIPTION	TYPICAL USE	REQUIREMENTS
	environmental systems in place.		<ul style="list-style-type: none"> Action Plan Checklist Inspector Supervisor Manager
24. Minutes	A record of outcomes relating to reports sent to Council for adoption	Used to demonstrate corporate governance Council's commitment and decisions referring to information submitted to Council.	<ul style="list-style-type: none"> Minute date Minute number Date of meeting Decision Councillors Present
25. After Hours Call-Outs	A record of actions and inactions as a result of emergency call outs outside working hours.	Use to record staff actions to emergency situations and demonstrate duty of care to the community members has been adhered to.	<ul style="list-style-type: none"> Record in diary time, date Record in diary situation on arrival Record Contact ATS outcomes to log in CSR

**GATHERING INFORMATION - BEST PRACTICE
INFORMATION CHECKLIST – EXTERNAL DOCUMENTS**

1. Medical reports	Is a written summary from an attending physician summarising the patient's condition	Used to establish the degree of injury and disability and thus challenge punitive damages	<ul style="list-style-type: none"> Name of examining physician Date of examination Reason for examination Typewritten format Signed by attending physician
2. Loss Adjuster reports	A written formal independent summary of the facts of the claim	Used to verify the facts. Could be used in the determination of liability and negligence	<ul style="list-style-type: none"> Name of loss adjusting firm Name of loss adjuster Claim reference number Date of all inspections Names and dates of all interviews Numbered pages in report

			<ul style="list-style-type: none"> • Clear annotations to document, photos, etc.
3. Expert reports	A written formal summary of certain circumstances of the claim, prepared by a specialist in the field of the incident	Used to verify the specific facts of the incident by an expert with the relevant experience. Could be used to justify action or inaction	<ul style="list-style-type: none"> • Name & company of expert • CV of expert • List of publications by expert • Reference number • Signature of expert • Date of investigation • Date of report
4. Weather reports	A record of the weather conditions that prevailed at the given time and location	Used to verify the conditions at the time of the incident	<ul style="list-style-type: none"> • Date and time of event • Date of inquiry • Name of weather service • Location of weather observation station • Data source
5. Valuation reports	A professional valuation based on the current climate of real estate value	Used to verify and substantiate the true cost value of claims whereby Council would be required to either purchase or pay-out the value of a property.	<ul style="list-style-type: none"> • Name of Company • Name of Valuer • Name of Director • Date of Value • Reference documents • Business accreditation • Signature of Valuer • ABN/ACN • Tax invoice • Full Address/Lot & DP of Property • Geographical context

Implementation

Requirements		Responsibility
1	Policy This Code supports Council's <i>Gathering Information for Risk Management Policy</i> .	Council officers
2	Staff	Council officers

	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.	
3	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 concerns.	Council officers
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. Proposed substantive changes to this policy will be placed on public exhibition, with public submissions invited for consideration during the exhibition period.	As applicable

Review

This Code will be reviewed every 4 years. It may also be reviewed and updated as necessary if legislation requires it; or when Council's related policies, functions, structure or activities change; or when technological advances or new systems change the way that 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

Term	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 a work-related injury or illness of an employed 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
Gathering Information for Risk Management Policy	www.esc.nsw.gov.au/inside-council/council/council-policies
Risk Management policy	
Signs as Remote Supervision policy	
<i>Local Government Act 1993</i>	www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182
<i>State Records Act 1998</i>	www.austlii.edu.au/au/legis/nsw/consol_act/sra1998156
<i>Privacy and Personal Information Protection Act 1988</i>	www.austlii.edu.au/au/legis/nsw/consol_act/papipa1998464
<i>Civil Liability Act 2002</i>	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	Available for purchase at 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	E06.0380 E09.2418	Policy reviewed and Code retained (G09.99)
2	27 Aug 2013	Council	13/246	E06.0380 E13.7095	Policy Reviewed and Code retained
3	11 Apr 2017	Council	17/99	E06.0380 E16.0297	Policy Reviewed and Code retained (start of new Council term). GMR17/011

4	20 June 2018	Div Mgr Governance and Administrative services	E06.0380	Code updated
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Internal use

Responsible officer		Director Commercial and Corporate Services		Approved by	Div Mgr Gov Admin
Minute	NA	Report	NA	Effective date	20 Jun 2018
File	E06.0380	Review date	June 2022	Pages	16

Appendix 1

Legislation which is relevant to this Code 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.