

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	11 April 2017
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 the 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.

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 This policy applies to all employees, volunteers and contractors of Eurobodalla Shire Council.
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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 <i>Gathering Information for Risk Management Code of Practice</i>, 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 be used to determine any follow-up actions and analyse the history of reported public concerns.</p>	Council officers

4	<p>Consultation</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. (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.</p>	As applicable
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Review

This 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
Risk Management Policy	www.esc.nsw.gov.au
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	E06.0380 E09.2418	Policy reviewed and retained (G09.99)
2	27 Aug 2013	Council	13/246	E06.0380 E13.7095	Updated to new Policy Template, updated review date, updated links
3	11 Apr 2017	Council	17/99	E06.0380 E16.0297	Reviewed (start of new Council term) with referencing updates.

Internal use

Responsible officer	Director Finance and Business Development		Approved by	Council	
Minute	17/99	Report	GMR17/011	Effective date	11 Apr 2017
File	E06.0380	Review date	Sep 2020	Pages	5

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.