

Climate Change

Duty of care and due diligence



Duty of Care

"Statutory authorities, including local government, have duties of care in exercising their functions and powers. At law, a failure to effectively discharge your duty of care may give rise to a cause of action against you." (DELWP 2020)

As the threat of climate change is now clearly established through legislation, national and state policy and international agreements, it is likely a court will see the risks and impacts of climate change are now reasonably clearly foreseeable.

Three fundamental messages relate to risk and liability management:

- First, statutory authorities, including local government, have a duty of care in exercising their functions and powers to manage foreseeable risks.
- Secondly, climate change hazards and risks are significant and foreseeable, so decision-makers are accountable for considering these matters in making a decision as part of exercising their duty of care.
- Thirdly, good decision making is enabled by acting as a 'reasonable person' in making decisions guided by law.
- Councils have a duty of care in relation to climate change adaptation – this has been established in Victoria through VCAT since 2010, and in other jurisdictions. Because of this duty of care, councils may be open to claims in negligence.

For local government, a duty of care may arise in relation to:

- development approvals
- the provision (or lack thereof) of protective works
- or the provision (or lack thereof) of information or statements which are considered by a court to be negligent.

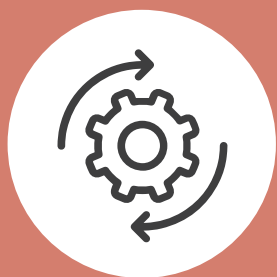
Council's duty of care requires that it undertakes due diligence.



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Demonstrating Due Diligence

- Follow a rigorous process for higher risk decisions
- Undertake effective consultation
- Ensure the relevant information that led to the decision is accounted for and appropriate records maintained
- Make the information that has led to a decision publicly available. (DELWP 2020)

To demonstrate due diligence, it is advisable that councils:

- follow a rigorous process for higher risk decisions, such as Australian Standard AS 5334-2013: Climate change adaptation for settlements and infrastructure – a risk-based approach
- undertake effective consultation with experts and their community around specific decisions
- maintain appropriate records and make the information that has led to a decision publicly available.

Refer to for more information: *Local Government Climate Change Adaptation Roles and Responsibilities under Victorian legislation. Guidance for local government decision-makers* (2020) The State of Victoria Department of Environment, Land, Water and Planning.