

## LEGAL REPRESENTATION

<b>Policy Type: Council Policy</b> <b>Policy Owner: Executive Manager Legal Services</b>	<b>Policy No. CP- 017</b> <b>Last Review Date: 21 February 2012</b>
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### POLICY OBJECTIVES

Council will in certain circumstances provide financial assistance to Elected Members, Officers and Volunteers who are required to engage legal services as a result of lawful actions they have undertaken in the fulfilment of their official duties.

### POLICY SCOPE

This policy identifies the circumstances, manner and extent of assistance for legal representation of Elected Members, Officers and Volunteers of the City.

### POLICY STATEMENT

In each case it will be necessary to determine whether assistance with legal costs is justified for the good government of the City.

#### 1. General Principles

- (a) The City may provide financial assistance for legal services to Elected Members, Officers and Volunteers in connection with the performance of their duties provided that the Elected Member, Officer or Volunteer has acted reasonably and has not acted illegally, dishonestly, against the interests of the City or otherwise in bad faith.
- (b) The City may provide such assistance in the following types of legal proceedings:
  - (i) proceedings brought by Elected Members and Officers to enable them to carry out their local government function (eg where an Elected Member or Officer seeks a restraining order against a person using threatening behaviour);
  - (ii) proceedings brought against Elected Members or Officers. This could be in relation to a decision of Council or an Officer which aggrieves another person (eg refusing a development application);
  - (iii) proceedings brought against Elected Members, Officers or Volunteers where their conduct in carrying out their functions is considered detrimental to the person (eg defending defamation actions); and
  - (iv) statutory or other inquiries where representation of Elected Members or Officers is justified.

- (c) The City will not support access to legal services for any defamation actions seeking the payment of damages for individual Elected Members or Officers in regard to comments or criticisms levelled at their conduct in their respective roles. Elected Members or Officers are not precluded, however, from taking their own private action. Further, the City may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.
- (d) The City may provide assistance to Elected Members, Officers and Volunteers in any case, except where indemnity for legal costs is provided for under a policy of insurance taken out by or on behalf of the Elected Member, Officer, Volunteer or by the City or to the extent that cover is provided for under a policy of insurance.
- (e) The legal services which are the subject of financial assistance under this policy shall be provided by a member of the City's panel of legal services providers. Where this is not appropriate, because of a conflict of interest or insufficient expertise, then the service may be provided by other solicitors approved by the Council.
- (f) Unless otherwise determined by Council, payment of financial assistance in respect of a particular application is not to exceed \$5,000.

## **2. Applications for Financial Assistance**

- (a) Subject to item (2(e)), decisions as to legal advice or financial assistance under this policy are to be made by the Council.
- (b) An Elected Member, Officer or Volunteer requesting financial support for legal services under this policy is to make an application in writing, where possible in advance, to the Chief Executive Officer (CEO) providing full details of the circumstances of the matter and the legal services required.
- (c) An application to the Council is to be accompanied by an assessment of the request. The assessment is to be prepared by or on behalf of the CEO.
- (d) An Elected Member or Officer requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the Local Government Act 1995.
- (e) Where there is a need for the provision of urgent legal services before an application can be considered by the Council, the CEO may give an authorisation to the value of \$3,000. Such authorisation shall be followed up by a report from the CEO to the next available Council meeting, outlining the circumstances behind the urgency of the matter.
- (f) Where it is the CEO who is seeking urgent financial support for legal services the Mayor shall deal with the application. Otherwise, if the CEO is seeking non-urgent financial support for legal services the Council shall deal with the application.

### 3. Repayment of Assistance

- (a) Any amount recovered by an Elected Member, Officer or Volunteer in proceedings, whether for costs or damages, will be off set against any monies paid or payable by the City.
- (b) Assistance will be withdrawn where the Council determines, upon advice, that a person has acted unreasonably, illegally, dishonestly, against the interests of the City or otherwise in bad faith; or where information from the person is shown to have been false or misleading.
- (c) Where assistance is so withdrawn, the person who obtained financial support is to repay any monies already provided. The City may take action to recover any such monies in a court of competent jurisdiction.

### 4. Acknowledgments

Prior to the submission of an application requesting financial support for legal services to Council, or in the case of an urgent request to the CEO, the Elected Member, Officer or Volunteer seeking assistance shall acknowledge in writing, that they fully comprehend the intent of this policy, and where appropriate undertake to reimburse the City in accordance with the provisions of Part 3 above

#### References that may be applicable to this Policy

Legislative Requirements:

Procedure, Process Maps, Work Instructions:

Other Plans, Frameworks, Documents Applicable to Policy:

Local Government Operational Guidelines No. 14 – Legal Representation for Council Members and Employees

Delegated Authority No:

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#### ORIGIN/AUTHORITY

Ordinary Meeting of Council

18/09/07

#### ITEM NO.

C07/003

#### REVIEWS

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Ordinary Meeting of Council

21/02/12

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