



Reference:
LC - 01

POLICY

Legal Representation for Elected Members and Employees

Policy Objective: To protect the interests of Elected Members and employees (including past Elected Members and former employees) where they have become involved in legal proceedings as a result of their official functions.

Policy:

Definitions:

Approved Lawyer is to be –

- a) a ‘certified practitioner’ under the *Legal Practice Act 2003*;
- b) from a law firm on the City’s panel of legal service providers, if relevant, unless Council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and
- c) approved in writing by Council or the CEO under delegated authority.

Elected Member or employee – means a current or former commissioner, Elected Member, non-elected member of a council committee or employee of the City.

Legal proceedings – may be civil, criminal or investigative.

Legal representation – is the provision of legal services, to or on behalf of an Elected Member or employee, by an approved lawyer that are in respect of

- a) a matter or matters arising from the performance of the functions of the Elected Member or employee; and
- b) legal proceedings involving the Elected Member or employee that have been, or may be, commenced.

Legal representation costs – are the costs, including fees and disbursements, properly incurred in providing legal representation.

Legal services – include advice, representation or documentation that is provided by an approved lawyer.

Payments – by the City of legal representation costs may be either by –

- a) a direct payment to the approved lawyer (or the relevant firm); or
- b) a reimbursement to the Elected Member or employee.

1. Payment Criteria

There are four major criteria for determining whether the City will pay the legal representation costs of an Elected Member or employee. These are –

- a) the legal representation costs must relate to a matter that arises from the performance, by the Elected Member or employee, of his or her functions;
- b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- c) in performing his or her functions, to which the legal representation relates, the Elected Member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- d) the legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs that may be approved

2.1 If the criteria in clause 1 of this policy are satisfied, the City may approve the payment of legal representation costs –

- a) where proceedings are brought against an Elected Member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Elected Member or employee;
- b) to enable proceedings to be commenced and/or maintained by an Elected Member or employee to permit his or her functions – for example where an Elected Member or employee seeks to take action to obtain a restraining order against a person using threatening behavior to the Elected Member or employee; or
- c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about Elected Members or employees.

2.2 The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Elected Member or employee.

3. Application for payment

3.1 An Elected Member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Council or CEO.

3.2 The written application for payment of legal representation costs is to give details of –

- a) the matter for which legal representation is sought;
- b) how the matter relates to the functions of the Elected Member or employee making the application;
- c) the lawyer (or law firm) who is to be asked to provide the legal representation;
- d) the nature of legal representation to be sought (such as advice, representation in court, preparation of documents etc);
- e) an estimated cost of the legal representation; and
- f) why it is the interest of the City for payment to be made.

3.3 The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.

3.4 As far as possible the application is to be made before commencement of the legal representation to which the application relates.

3.5 The application is to be accompanied by a signed written statement by the applicant that he or she –

- a) has read and understand, the terms or this policy;
- b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and
- c) undertakes to repay the City any legal representation costs in accordance with the provisions of clause 7.

3.6 In relation to clause 3.5 (c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of that money to the local government as may be required by the local government and the terms of that Policy.

3.7 An application is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant, by an appropriate employee.

4. Legal representation costs – Limit

4.1 Council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.

4.2 A Elected Member or employee may make a further application to Council in respect of the same matter.

5. Council's powers

5.1 Council may –

- a) refuse;
- b) grant; or
- c) grant subject to conditions,

an application for payment of legal representation costs.

- 5.2 Conditions under clause 5.1 may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.
- 5.3 In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the City's Elected Members or employees insurance policy or its equivalent.
- 5.4 Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.5 Council may, subject to clause 5.6, determine that an Elected Member or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –
- a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - b) given false or misleading information in respect of the application.
- 5.6 A determination under clause 5.5 may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 5.7 Where Council makes a determination under clause 5.5, the legal representation costs paid by the City are to be repaid by the Elected Member or employee in accordance with clause 7.

6. Delegation to Chief Executive Officer

- 6.1 In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of Council, any of the powers of Council under clause 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.
- 6.2 An application approved by the CEO under clause 6.1, is to be submitted to the next ordinary meeting of Council. Council may exercise any of its powers under this policy, including its powers under clause 5.4.

7. Repayment of legal representation costs

- 7.1 An Elected Member or employee whose legal representation costs have been paid by the City is to repay the City –
- a) all or part of those costs – in accordance with a determination by Council under clause 5.7;
 - b) as much of those costs as are available to be paid by way of set-off – where the Elected Member or employee receives monies paid for costs, damages or settlement, in respect of the matter for which the City paid the legal representation costs.
- 7.2 The City may take action in a court of competent jurisdiction to recover any monies due to it under Policy.

Procedure: Pro LC - 01

Originating Section:

Legal and Compliance

Reviewer: Legal and Compliance

Approved:

Relevant Legislation: *Local Government Act 1995*

Delegated Authority: DA - CEO 5.9

Other References: DLGRD Operational Guideline # 14 – April 2006



Reference:
LC - 02

POLICY

Lease Fee Charges

Policy Objective:

To control and manage the establishment of lease fee charges for sporting and community groups.

Policy:

Lease fee charges for sporting and community groups for lease of Council freehold or vested land shall be based on the area of lease. The City of Mandurah supports and encourages the establishment of local sporting and recreational clubs for the benefit of the community. In setting the lease fee, Council shall set a price per square metre of the leased area, which shall be applied to all sport and community leases, commercial leases excluded.

Procedure: Pro LC - 02

Originating Section:

Legal and Compliance

Reviewer: Legal and Compliance

Approved:

Relevant Legislation:

Delegated Authority:

Other References:



Reference:
LC-03

POLICY

Risk Management

Policy Introduction:

The City of Mandurah recognises that as a public authority it is exposed to a broad range of risks which, if not managed, could adversely impact on the organisation achieving its strategic objectives. Therefore the City will implement an enterprise-wide risk management framework and methodology as a system to identify and address, where practical, areas of potential risk within City. The system adopted will be consistent with the *Australian Standard for Risk Management – AS/NZS4360*.

The intent of this policy is to create an environment where Council, management and staff assume responsibility for risk management, through consistent risk management practices.

Policy Objective:

The objectives of the risk management policy are:

- Safeguard the City's assets - people, financial sustainability, property, reputation and information;
- Promote risk management principles as a strategic tool to ensure better informed decision making throughout Council and in the achievement of its strategic objectives;
- Capitalise on opportunities identified for the City;
- Minimise or eliminate adverse impacts from Council's services or infrastructure on the community, visitors and the environment; and
- Maintain and improve reliability and quality of service provided by City, within its controls and capabilities.

Policy:

The City will manage risk in accordance with the Australian/New Zealand Standard for Risk Management (AS/NZS 4360:2004) and Guidelines for Managing Risk in the Australian and New Zealand Public Sector (HB 143:1999). The City will, at all levels of the organisation, use the Standard and Guidelines to ensure that the objectives are achieved and:

- Apply a risk management framework which is consistent with the current Australian Standard (AS/NZS 4360) for making decisions on how best to identify, assess and manage risk throughout all section of the organisation;
- Prioritise identified risks and implement treatments progressively based on the

level of risk assessed and the effectiveness of the current treatments;

- Integrate risk management with existing planning and operational processes, including the Strategic Plan;
- Take into account relevant legislative requirements and political, social and economic environments in managing risk;
- Create and promote a culture of risk awareness throughout the organisation through training and encourage and empower staff in the management of risk; and
- Ensure resources and operational capabilities are identified and responsibility for managing risk is allocated.

The City will use the following elements of the AS/NZS 4360:2004 standard as the model for implementing and managing the risk management process within Council's business operations.

▪ **Establish the Context**

Determine the scope of the risk management process in relation to the strategic, operational and risk management context of the organisation.

▪ **Risk Identification**

Risks need to be identified in terms of what risks could occur, why and how they might occur, where and under what circumstances they can happen.

▪ **Risk Analysis**

Risks need to be assessed in terms of their likelihood and effects and consequence if they do occur. Existing controls also need to be evaluated.

▪ **Risk Evaluation**

Determine whether the level of risk is acceptable to the organisation and prioritise the risks.

▪ **Risk Treatment**

Determine the most appropriate way to manage the risk (avoid, reduce likelihood, reduce consequence, transfer) while taking into consideration the cost of mitigation of the risk with the likely benefits of mitigation.

▪ **Monitoring and Review**

Risks must be monitored and reviewed periodically. Risk treatment and action plans must also be monitored to continuously improve the organisation's performance.

▪ **Communication and Consultation**

Communication processes with internal and external stakeholders must occur throughout the risk management process to ensure risk information is converted into management knowledge. Communication about risk strategy emphasises the connection with strategic goals.

Responsibility/Accountability

Risk management is everyone's business:

All employees are accountable for managing risk within their area of responsibility.

- Senior management will be required to create an environment where managing

risk is accepted as the personal responsibility of each member of the organisation, and integrated with planning and operational processes.

- Each team will be accountable for the implementation and maintenance of a consistent risk management framework within their areas of responsibility, in line with the City's Risk Management Strategy and Framework.

Reporting

A monitoring and reporting process will be implemented which will provide monthly reports to the Executive Management Group and quarterly reports to the Audit and Risk Committee and Council on the status of Risk Management within the City and identify the need for specific areas for review.

Procedure: Enterprise-wide Risk Management Framework & Strategy
Risk Management Tool Kit

Originating Section:

Procurement & Governance Services

Reviewer:

Manager Procurement & Governance Services

Approved:

26 June 2007 AR.6/6/07 (Original)

G.15/9/09 15.09.09 (Reviewed)

Relevant Legislation:

Delegated Authority:

Other References:

AS/NZS 4360:2004, HB
143:1999,
AS/NZS 4360



Reference: LC-04

POLICY

OWNERS AND OCCUPIERS ROLL – VOTER PARTICIPATION IN ELECTIONS

Policy Objective:

To develop strategies for improving voter participation at all future Local Government elections in Mandurah to ensure the best choice of candidate;
To develop strategies to improve the participation of electors who are non-residential property owners/occupiers and thereby improve the quality of the City's Owners and Occupiers Roll.

Policy:

1. To develop and undertake voter information and education programs for absentee owners and occupiers to inform them of their rights and entitlement to be enrolled on the City's Owners and Occupiers Electoral Roll, including a mail out to all eligible electors prior to each ordinary Local Government election.
2. To actively encourage all absentee owners and occupiers to enrol in the City's elections.
3. To formulate mechanisms to encourage greater voter participation in the City's election process, including absentee owners and occupiers.

Procedure:

Originating Section: Procurement & Governance

Reviewer:

Approved: G28/4/09

Relevant Legislation:

Delegated Authority:

Other References: