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## ELECTED MEMBERS POLICIES

### Payment of Legal Costs for Councillors



Policy Number:	E8
Relevant Delegation:	Not Applicable
Adoption Details:	28 January 2016
Last Review Details:	25 November 2019

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#### **POLICY OBJECTIVE:**

To provide guidelines for the Council when making decisions about payment of legal costs for present and past Councillors in relation to legal matters arising from their current or past official functions as Councillors of the Shire of York.

#### **POLICY SCOPE:**

This policy applies to past and present Councillors of the Shire of York.

#### **POLICY STATEMENT:**

#### **INTRODUCTION**

Circumstances may arise from time to time where Councillors (past or present) find themselves the subject of legal action arising from formal decisions made in their role or required to participate in a legal matter (such as giving of evidence) on a Council matter.

Under the *Local Government Act 1995*, the Shire of York is empowered to protect the interests of individuals where they become involved in civil legal proceedings because of their official functions. In these situations, the Shire may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings.

This policy sets out the parameters for providing assistance either in the form of legal advice and representation, or reimbursement of legal costs incurred.

#### **PRINCIPLES**

- (a) Legal representation and support should be potentially available to Councillors on a matter arising from the discharge of their role and function provided that the Councillor has acted in good faith and according to the Councillor Code of Conduct, *the Local Government Act*, the *Local Government (Rules of Conduct) Regulations* or any other written law;
  - (b) Financing of legal costs will not be:
    - paid retrospectively by the Shire in support of a Councillor
    - provided for defamation proceedings initiated by a Councillor
    - provided to a Councillor on any matter to do with Council business or activity initiated by that Councillor independently of any formal Council decision. (See also the Elected Members Code of Conduct E1 and Employees Code of Conduct O8).
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## PROVISIONS

### 1 FINANCIAL ASSISTANCE CRITERIA

- 1.1 The Shire may provide financial assistance for legal costs of a Councillor based on the following criteria:
- the legal costs must relate to a matter that arises from the performance, by the Councillor of his or her role as a Councillor.
  - the legal cost must be in respect of legal proceedings that have been, or may be, commenced.
  - in performing his or her function, the Councillor has acted in good faith, and according to provisions under the Code of Conduct: Council Members, Committee Members & Candidates E1, *Local Government (Rules of Conduct) Regulations 2007* or other written law.
  - the legal representation costs do not relate to a matter or dispute in respect of a Local Government Election process.
- 1.2 If the criteria in clause 1.1 are satisfied, the Council may approve the payment of legal costs:
- where proceedings are brought against a 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 member.
  - where proceedings are commenced by a Councillor to enable them to carry out their local government functions - for example, where a Councillor seeks a restraining order against a person using threatening behaviour to the Councillor.
  - for involvement in a statutory or other inquiry that requires information to be given by, or to which information is given, by a member in connection with his or her functions.
- 1.3 The Shire will not make payment for legal representation costs to a member for a defamation or negligence action instituted by a member or for legal advice or activity initiated independent of a formal Council decision.

### 2 APPLICATION FOR PAYMENT

- 2.1 A Councillor who seeks payment under this policy is to:
- (a) make an application(s) in writing, to the CEO, with the following details:
- the matter for which legal representation is sought.
  - how that matter relates to the functions of the Member making the application.
  - the solicitor (or firm) who is to be asked to provide legal representation.
  - the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.).
  - the estimated cost (if known) of the legal representation.
  - why it is in the interests of the Shire for payment to be made.
- (b) and so far as possible, make the application in paragraph (a) before seeking the legal representation to which the application relates.
- 2.2 The application is to be accompanied by a signed declaration by the relevant member or employee that he or she:
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- has read, and understands, the terms of this Policy.
  - 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.
  - acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 5 and any other conditions to which the approval is subject.
  - undertakes to repay to the Shire any legal costs in accordance with the provisions of clause 5, as may be required by the Shire and the terms of this Policy.

2.3 Once an application is received in accordance with this Policy a report is to be prepared by the CEO containing details of the application, an assessment of the request, an estimation of costs and a recommendation for consideration by the Council.

### **3 LEGAL COSTS**

3.1 Unless otherwise determined by the Council, payment of legal representation costs in respect of a single application is not to exceed \$15,000.

3.2 A Councillor may make an additional application(s) to the Council in respect of the same matter. The application must be made before any additional costs above the original approval are incurred.

### **4 COUNCIL'S POWERS**

4.1 The Council, in respect of an application for payment of legal representation costs, may:

- refuse the application.
- grant payment.
- grant payment subject to conditions.

4.2 Conditions may include, but are not limited to:

- a financial limit.
- a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

4.3 In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the Shire's member insurance policy (or its equivalent).

4.4 The Council may by resolution, cancel or vary an approval, or any conditions of approval, for the payment of legal representation costs.

4.5 The Council may resolve that a Councillor whose application for legal representation costs has been approved has, in respect of the matter for which legal costs were approved:

- not acted reasonably or in good faith.
- given false or misleading information in respect of the application.

4.6 Where the Council makes such a determination under Clause 4.5 or where a Court or Commission find that a Councillor has acted unlawfully or in a way that constitutes misconduct:

- assistance from the Shire will be immediately withdrawn.
  - the legal costs paid by the Shire are to be repaid by the member.
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## 5 REPAYMENT OF LEGAL REPRESENTATION COSTS

- 5.1 A Councillor whose legal representation costs have been paid by the Shire is to repay the Shire:
- (a) all or part of those costs – in accordance with a determination under Clause 4.5.
  - (b) as much of those costs as are available to be paid by way of setoff – where the member receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.
- 5.2 The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

### PENALTIES:

Not applicable.

### KEY TERMS/DEFINITIONS:

Not applicable.

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Responsible Officer: Chief Executive Officer  
Contact Officer: Chief Executive Officer  
Relevant Legislation: Local Government Act 1995  
Local Government (Model Code of Conduct) Regulations 2021

Review History:

<b>Date Review Adopted:</b>	<b>Resolution Number</b>
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