

Title	Obtaining Legal & Other Expert Advice & Legal Proceedings Between City of Cockburn & Other Parties
Policy Number (Governance Purpose)	



Policy Type

Council

Policy Purpose

This policy provides a mechanism to expedite the acquisition of legal and other expert advice, as required, and also provides a system enabling advice and the ongoing status of legal proceedings of the City of Cockburn to be provided to Elected Members on a regular basis.

Policy Statement

Council is now required to seek legal and other expert advice on an increasing basis, to ensure its best interests are protected at all times. The City of Cockburn is also frequently a party to legal proceedings, either as a result of initiating actions, or as a result of responding to actions.

(1) Application

This Policy applies to in relation to legal & other expert advice sought by Council, and legal proceedings commenced or responded to by the City of Cockburn, or any person acting in their capacity as a representative of the City of Cockburn and for whom the City of Cockburn is vicariously liable.

(2) Obtaining Legal & Other Expert Advice

1. In this Policy “legal advice” has the same meaning as in the Legal Practice Act 2003 (WA).
2. Other expert advice includes that obtained from practitioners qualified in areas of specific professional expertise or knowledge. Examples include advice sought from consulting firms or individuals and from employees of federal or state government agencies with whom Council has binding contractual or statutory obligations.
3. The Chief Executive Officer is authorised to obtain legal and other expert advice as is deemed necessary to maintain the proper administration of Council affairs, subject to the following conditions:-
 - a. in the instances where Council has resolved or requested to seek legal or other expert advice, a copy of that advice and Council's letter of instruction be provided to all Elected Members as soon as practicable within seven(7) days of receipt by the City unless otherwise resolved by Council;

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- b. where copies of legal or other expert advice are made available to Elected Members, the content of the advice is not permitted to be disclosed to third parties, unless by resolution of Council', following the opinion of the Solicitor or specialist who provided advice to the Council about the possible consequences of making that advice available to a third party;
- c. Council maintain its retainer arrangement with its Solicitors for the purpose of ascertaining matters of an administrative nature where procedural verbal advice is obtained and that such advice sought be recorded as a file note on the appropriate file;
- d. that where a legal or other expert opinion is sought in relation to an item placed before Council, a note that the item is subject to legal or other expert advice (as appropriate) be included in the relevant Agenda or Minutes.
- e. before the Council considers an item on an agenda that includes or is based on expert advice (eg legal, environmental, financial) the Council shall have been provided with a copy of that advice (or summary if appropriate) prior to the meeting with adequate time to read and understand the advice before making its decision.
- f. Legal advice sought by Council can only be obtained utilising the services of practitioners who form part of the Panel of Preferred Suppliers, as adopted by Council from time to time, unless, in the CEO's opinion, it is advantageous to utilise the services of a different provider who has specific expertise in a particular case.

(3) Commencing Legal Proceedings

1. This section applies to any legal proceedings initiated as a result of a resolution of Council.
2. A Council decision to initiate a legal proceeding may include instructions to be issued on behalf of the City and which legal practitioners are to be engaged.
3. In addition, a Council decision may authorise the Chief Executive Officer (CEO) to negotiate an outcome on its behalf and settle proceedings, if considered appropriate to do so, and in doing so the Council will consider any legal constraints applicable to the CEO which may compromise that officer's capacity to achieve any outcome desired by Council.
4. In the absence of any clear direction to the CEO in this regard, settlement outcomes must be considered and decided by Council.
5. This policy does not apply to actions commenced by officers of the City who are authorised to commence proceedings on behalf of the City by authority vested in them through legislation, (including delegated legislation) or other delegated authority of Council.

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6. Notwithstanding (5) above, the CEO, or any officer, through the CEO, may inform the Elected Members of the commencement and ongoing status of any action commenced by an officer of the City.
7. The CEO shall establish and maintain a procedure which enables those matters which are subject to the terms of this section to be centrally recorded and updated.
8. A record of the procedure mentioned in (7) above shall be presented to the Audit and Strategic Finance Committee at least annually, or as often as considered appropriate by the CEO or as requested by the Audit and Strategic Finance Committee.

(4) Responding to Legal Proceedings

1. This section applies to any legal proceedings to which the City is required to formally respond.
2. The Elected Members must be advised that a legal proceeding has been commenced against the City as soon as practicable after the City has been given notice of the proceeding.
3. The CEO shall establish and maintain a procedure which enables those matters which are subject to the terms of this section to be centrally recorded and updated, as appropriate.
4. A record of the procedure mentioned in (3) above shall be presented to the Audit and Strategic Finance Committee at least annually, or as often as considered appropriate by the CEO, or as requested by the Audit and Strategic Finance Committee.

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