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Preamble

This procedure is to confirm who may give instructions for the purpose of obtaining legal advice and to set out arrangements for access to legal advice which has been provided to Council.

Legal services obtained by Council generally relate to:

- litigation, both planning matters and other matters;
- advice in relation to the preparation of legal instruments;
- Preparation of contracts and advices on other matters.

In this procedure, the above and any other services as requested from time to time are collectively referred to as ‘legal advice’.

Legal advice is generally provided by law firms which have been appointed to Council's legal panel.

Authority to approve legal action

The authority to approve legal action of any sort rests with the General Manager. The type of legal initiatives that may be taken include:

a. defending an action against Council by another party e.g. in relation to a contractual matter;
b. initiating prosecutions for day to day matters e.g. failure to comply with a notice;
c. initiating legal action to protect an interest of Council e.g. a rating matter. It may involve defending an appeal to a higher court in the event of an adverse early decision;
d. seeking legal advice on matters relating to litigation as per (a), (b) and (c) above;
e. seeking legal advice on matters on the prospects of potential litigation to further Council’s interest;
f. seeking legal advice on the interpretation of laws, regulations, planning instruments, policies and provisions contained in contracts and leases;
g. drafting contracts, leases, agreements, deeds, licenses, memoranda of understanding and other instruments;
h. Ad-hoc advice or guidance on whether contemporary issues may have legal implications e.g. reviewing draft documents prepared by Council, GIPA and ICAC matters, Plans of Management etc.

Legal representatives may be instructed:

a. by the General Manager on all matters consistent with Council decisions and policies;
b. Through the Directors or the Contracts and Property Services Co-ordinator on all matters consistent with Council decisions and policies except initiating legal proceedings which require the concurrence of the General Manager.

Obtaining legal services

External lawyers (both law firms and barristers as appropriate) on the legal panel or otherwise as may be required from time to time, will be engaged to act for Council.

Instructions for the provision of legal advice relating to all areas of Council are issued in practice primarily through the Contracts and Property Services section of Council. In these matters, the General Manager, Directors and the Contracts and Property Services section retain a role in overseeing the matter.
The procedure to obtain legal services requires:

a. A Council officer is to complete a Request for Legal Services, including the allocation number for payment of legal services invoices and submit it to the Contracts and Property Services Co-ordinator for review;

b. If appropriate, the Contracts and Property Services Co-ordinator then seeks approval from the General Manager or a Director. If approved, the Contracts and Property Services Co-ordinator instructs a member of the Council’s legal panel, or other provider as may be appropriate, to provide the legal services;

c. The Contracts and Property Services Co-ordinator will primarily liaise with the legal provider directly, unless otherwise agreed, and co-ordinate the conduct of the matter internally; and

d. Invoices for legal fees will be submitted to the Contracts and Property Services Co-ordinator for review before approval for payment using the allocation number provided by the Council officer when requesting legal services.

Access to Legal Advice

From time to time issues may arise about access to legal advice. This often relates to requests by Councillors but is also relevant to requests by Council staff including senior staff.

Legal advice attracts legal privilege, the effect of which is that the recipient of the advice is not required to disclose the advice to third parties. Legal privilege may be waived or lost by disclosure of the advice to a third party, including by referral to the contents of the advice.

Legal privilege is recognised in various circumstances including:

a. as a basis for withholding documents under legislation;

b. as a basis for closing a Council meeting to exclude members of the public;

c. as a basis for withholding documents from production under a subpoena or notice to produce, whether or not Council is a party to the legal proceedings.

Inappropriate release of information contained in legal advice (whether wilful or inadvertent) can be harmful to Council’s interests and often the public interest.

All Councillors and staff in possession of aware of legal advice must handle it with the utmost discretion.

It is vital in protecting Council’s interests that:

- all legal advice is treated as confidential;
- legal advice not be referred to in any published documents unless there is a sound purpose for doing so;
- Council maintains procedures governing access to such information and creates a hierarchy of persons with access rights and a grading of confidentiality depending on the nature of the advice;
- Publication to any third party of legal advice or the substance of that advice be formally authorised by the General Manager.

Councillors privy to such information have a special duty to avoid any disclosure to any party.

Potential recipients of copies of legal advice must have regard to conflicts of interest, actual or potential, and must not obtain access to advice in respect of which they have a conflict of interest.

Access

a. Councillors and staff will only be given access to legal advice on a ‘need to know’ basis;

b. Staff may read legal advice which in the opinion of the General Manager is directly relevant to their work but are not entitled to have copies unless provided by the General Manager;

c. Councillors may:
i. have access to legal advice relevant to a matter before Council upon which a decision is to be made, but may not have written copies of such material. All copies circulated during a briefing or meeting must be returned at the end of that briefing or meeting;

ii. have access to advice on a read only basis on matters involving potential or current litigation or where Council has a potential or actual legal liability, at form a briefings or meetings called for that purpose;

iii. have access to advice on a read only basis upon request to the General Manager on any matter not involving matters referred to at (ii) above and in making that request the Councillor shall state the advice requested and the purpose of that request. Copies will not be provided unless the General Manager releases copies to that Councillor;

iv. not have access to legal advice in any form on a matter where he/she has taken an advocacy role for a person in respect of an issue involving the Council.

d. No recipient of legal advice shall publish that advice or the substance of it to any third party unless formally authorised by the General Manager.