

Obtaining Legal Services

Resolution of Council: 28 October 2002



Responsibility:
Legal Services

city of villages

POLICY ON OBTAINING LEGAL SERVICES

Note - the Policy on Obtaining Legal Services, the Policy on Obtaining Access to Legal Advice and the amended Code of Conduct, as adopted by Council, are as follows:

Purpose

The purpose of this policy is to confirm who may give instructions for the purpose of obtaining legal advice.

Legal services obtained by Council generally relate to:

- (a) Litigation – both planning matters (Land and Environment Court) and other matters;
- (b) Advice in relation to the preparation of legal instruments (for example, the Local Environment Plan); and
- (c) Preparation of contracts and advice on other matters.

In this policy, the above 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 obtain Legal Services

Currently the power to issue instructions to Council's solicitors to provide legal advice is with the General Manager. This has been implicitly, rather than explicitly, given to the General Manager, when Council delegated all of its powers of the General Manager, except (a) those Council cannot delegate under the Act, (b) those that Council kept to itself, and (c) those delegated to the Lord Mayor. In turn the General Manager has delegated powers to the General Counsel.

It is reasonable that the authority to approve legal action of any sort rests mainly with the General Manager. A brief review of the type of legal initiatives that may be taken illustrates the point. Such may include:

- (a) defending an action against Council by another party, eg by an dissatisfied applicant in the L&E Court or in relation to a contractual matter;
- (b) initiating prosecutions for day to day matters. Examples may include against licensed premises, for failure to comply with a notice, or failure to pay a fine, or over a contractual breach;
- (c) initiating legal action to protect an important interest of Council eg a rating matter. If a point of principle is involved it may automatically involve lodging an appeal if unsuccessful in the first instance. Alternatively, 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 the prospects of potential litigation to further Council's interest;

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- (f) seeking legal advice on the interpretations of laws, regulations, planning instruments, policies, and provisions contained in contracts and leases;
- (g) drafting contracts, leases, agreements (including sponsorship agreements), deeds, licenses, MOU's and other instruments;
- (h) ad-hoc advice or guidance on whether contemporary issues may have legal implications; eg reviewing draft documents prepared by Council, FOI and ICAC matters, Plans of Management etc.

The role of the General Counsel is to protect Council's legal interests. This role is implemented directly and through the Legal Unit, who in turn retain external lawyers (both law firms and barristers) to act for Council. Instructions for the provision of legal advice relating to all areas of Council, with limited exceptions, are issued primarily by General Counsel and the Legal Unit. It is proposed that this continue on the basis described in this policy.

The recently established position of City Prosecutor includes a responsibility for enforcement action, including through the commencement of legal action for matters within the City Prosecutor's responsibility. In these instances, it is proposed that the City Prosecutor have authority to obtain legal advice, including the commencement of legal action.

In all of the above situations, legal proceedings are not commenced without the concurrence of the General Manager, except in minor enforcement matters.

In some commercial matters, it is appropriate for General Counsel and the Legal Unit to instruct external lawyers, and to refer them to M2 and M3 staff for the purpose of instructions and liaison on day to day matters (but not matters relating to legal strategy). In these matters, General Counsel and/or the Legal Unit retain a role in overseeing the matter.

Authority to obtain legal services

- (a) Council may instruct its legal representatives, through the Lord Mayor, or the General Manager, or the General Counsel (as appropriate) at any time on any matter provided it is by formal resolution;
- (b) The Lord Mayor may instruct Council's legal representatives directly or through the General Manager or General Counsel, as appropriate;
 - (i) provided the instruction is not inconsistent with Council policies or decisions; or
 - (ii) where there is an inconsistency (such as to settle court proceedings where Council's prospects are poor) if it is in Council's interest to do so and the Lord Mayor has been so advised (by General Counsel or the General Manager, or external Counsel).

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If the Lord Mayor proposes to give instructions (either directly or indirectly) to commence legal proceedings (including an appeal), he/she shall consult the General Manager and the General Counsel, unless it is inappropriate to do so, in which case he/she shall consult at least 2 Councillors, (in confidence if necessary), before doing so. On the day such proceedings are commenced, the General Manager and the General Counsel shall be advised of the nature of the proceedings, unless they have a conflict of interest.

The Lord Mayor's standing delegated authority to seek independent legal advice at any time is not altered by this policy.

- (c) The General Manager may instruct Council's legal representatives on all matters, consistent with Council decisions and policies. If the General Manager proposes to give instructions to commence legal proceedings (including an appeal), but excluding minor enforcement or prosecution matters, he/she shall consult the Lord Mayor before doing so, unless the Lord Mayor has a conflict of interest;
- (d) The General Counsel may instruct Council's legal representatives, on all matters consistent with Council decisions and policies except initiating legal proceedings which require the concurrence of the General Manager. This authority may be sub-delegated to Legal staff in accordance with the requirements of the General Manager.
- (e) The City Prosecutor may instruct Council's legal representatives for day to day matters required by his/her position description, or where explicitly delegated by the General Manager consistent with his/her delegations, including the commencement of legal proceedings in minor enforcement or prosecution matters. This authority may be sub-delegated to Legal staff in accordance with the requirements of the General Manager.

Implementation of Policy

It is proposed that the Delegations of Authority to the General Manager, by the General Manager and to the Lord Mayor be amended in accordance with, and to give effect to, this Policy.
